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(10)

No. 06-134

FILED
FEB 27 2007
OFFICE OF THE CLERK
SUPREME COURT, U.S.

In The
Supreme Court of the United States

THE PERMANENT MISSION OF INDIA TO THE UNITED NATIONS, and THE PERMANENT REPRESENTATIVE OF MONGOLIA TO THE UNITED NATIONS,

Petitioners,

v.

CITY OF NEW YORK, NEW YORK,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

JOINT APPENDIX

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Petition For Certiorari Filed July 25, 2006
Certiorari Granted January 19, 2007

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Exhibit A – Amended Complaint for Foreclosure of Tax Liens and Other Relief dated December 23, 2003 (Reproduced herein at pages 70 to 79)

Exhibit B – Affidavit of Ruchira Kamboj in Support of Motion to Dismiss dated January 15, 2004, with exhibits 93

Exhibit C – India's Second Supplemental Responses to Plaintiff's First Set of Interrogatories and First Request for the Production of Documents for the Purpose of Jurisdictional Discovery dated December 22, 2004 140

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RELEVANT DOCKET ENTRIES

U.S. District Court
United States District Court for the Southern District of New York (Foley Square)
CIVIL DOCKET FOR CASE #: 1:03-cv-03256-RCC-FM

The Permanent Mission of India to The United Nations

Date Filed	#	Docket Text
05/08/2003	1	NOTICE OF REMOVAL from Supreme State Court, County of New York. State Court Case # 401201-03. FILING FEE $ 150.00 RECEIPT # 472930. (JJM) (Entered: 05/12/2003)
		* * *
09/17/2003	7	ANSWER to Complaint by Permanent Mission (Attorney Robert A. Kandel, John J.P. Howley Firm: Kaye, Scholer, LLP). (jco) (Entered: 09/22/2003)
		* * *
10/03/2003		PRETRIAL CONFERENCE held on 10/3/03 before Judge Richard C. Casey. Counsel are present. See transcript. Defendant's request to file a motion to dismiss and stay discovery – decision reserved. (sb) (Entered: 10/10/2003)
		* * *
10/10/2003	9	ORDER, plaintiff is entitled to only limited discovery on the issue of whether jurisdiction exists over defendant. No additional discovery is permitted at this time. An appropriate case management plan accompanies this

Order. (signed by Judge Richard C. Casey); (kw) (Entered: 10/15/2003)

* * *

10/31/2003 11 NOTICE OF MOTION by Permanent Mission for an order dismissing complaint purs to Rule 12(b)(1) of the FRCP; Return Date not indicated (djc) (Entered: 11/04/2003)

10/31/2003 12 MEMORANDUM OF LAW by Permanent Mission in support of [11-1] motion for an order dismissing complaint purs to Rule 12(b)(1) of the FRCP. (djc) (Entered: 11/04/2003)

* * *

12/29/2003 15 AMENDED COMPLAINT FOR FORECLOSURE of TAX LIENS against "Jane Doe #1" through "Jane Doe #20", Great America Leasing Corporation, The Permanent Mission of India to The United Nations. Document filed by The City of New York. (sb,) (Entered: 01/07/2004)

* * *

01/16/2004 18 MOTION (FILED ON SERVICE DATE) to Dismiss the Amended Complt with attached Affdvt of Ruchira Kamboj in Support. (Accepted for Filing by RCC) Document filed by The Permanent Mission of India to The United Nations. (pa,) (Entered: 01/28/2004)

01/20/2004 19 MEMORANDUM OF LAW in Support re: [18] MOTION (FILED ON SERVICE DATE) to Dismiss.. Document

filed by The Permanent Mission of India to The United Nations. (pa,) (Entered: 01/28/2004)

* * *

05/17/2004 21 ORDER this Order disposes of the motion listed at Numbers 11 and 18 of the Clerk's docket for this case. So Ordered. (Signed by Judge Richard C. Casey on 5/14/04) (jco,) (Entered: 05/18/2004)

* * *

03/03/2005 26 MOTION (FILED ON SERVICE DATE) to Dismiss the Amended Complaint in this Action. Document filed by The Permanent Mission of India to The United Nations. (jmi,) (Entered: 03/09/2005)

03/03/2005 27 INDIA'S MEMORANDUM OF LAW in Support re: [26] MOTION (FILED ON SERVICE DATE) to Dismiss. Document filed by The Permanent Mission of India to The United Nations. (jmi,) (Entered: 03/09/2005)

03/03/2005 28 AFFIRMATION of Robert Negron, JR. in Support re: [26] MOTION (FILED ON SERVICE DATE) to Dismiss.. Document filed by The Permanent Mission of India to The United Nations. (jmi,) (Entered: 03/09/2005)

03/03/2005 29 PLAINTIFF'S MEMORANDUM OF LAW in Opposition re: [26] MOTION (FILED ON SERVICE DATE) to Dismiss.. Document filed by The City of New York. (jmi,) (Entered: 03/09/2005)

03/03/2005	30	DECLARATION of John R. Low-Beer in Opposition to Defendant's re: [26] MOTION (FILED ON SERVICE DATE) to Dismiss.. Document filed by The City of New York. (jmi,) (Entered: 03/09/2005)
03/03/2005	31	INDIA'S REPLY MEMORANDUM OF LAW in Support of its re: [26] MOTION (FILED ON SERVICE DATE) to Dismiss.. Document filed by The Permanent Mission of India to The United Nations. (jmi,) (Entered: 03/09/2005)

* * *

07/07/2005	34	ORDER denying [26] Motion do Dismiss. The international practice that the immovable-property exception codifies and the legislative history of the FSIA demonstrates that defendants are not entitled to immunity from these claims because the tax liens place their and the City's rights in the Mission properties in issue. Accordingly, the court may exercise jurisdiction under the FSIA to adjudicate the validity of those liens. It is worth emphasizing that this conclusion is not meant to have any impact on the separate question of whether the properties are immune from taxation. The premises may or may not be exempt from taxation; the Court merely holds today that it is empowered to make that determination. Defendants' motions to dismiss for lack of subject matter jurisdiction are therefore denied (Signed by Judge Richard C. Casey on 7/6/05) (yv,)

Additional attachment(s) added on 7/28/2005 (rag,). (Entered: 07/08/2005)

* * *

07/29/2005	35	ANSWER to Amended complaint. Document filed by The Permanent Mission of India to The United Nations. Related document: [15] Amended Complaint filed by The City of New York. Received in night deposit box on 7/29/05 at 5:38 p.m. (db,) (Entered: 08/02/2005)
08/03/2005	36	STIPULATION AND ORDER; defendants' time to answer or move against the Amended Complaint is extended through and including 7/29/05. (Signed by Judge Richard C. Casey on 8/3/05) (sac,) (Entered: 08/05/2005)
08/05/2005	37	NOTICE OF INTERLOCUTORY APPEAL from 34 Order on Motion to Dismiss,,,. Document filed by The Permanent Mission of India to The United Nations. Filing fee $ 255.00, receipt number 551858. Copies of Notice of Interlocutory Appeal mailed to Attorney(s) of Record: NYC Law Department (nd,) (Entered: 08/05/2005)

* * *

U.S. District Court
United States District Court for the
Southern District of New York (Foley Square)
CIVIL DOCKET FOR CASE #: 1:03-cv-06086-RCC-FM

The Bayaryn Jargalsaikhan
as principal resident representative to the
United Nations of the Mongolian

Date Filed	#	Docket Text
08/12/2003	1	NOTICE OF REMOVAL from Supreme State Court, County of New York. State Court Case #401200-03. FILING FEE $150.00 RECEIPT # 482144. (laq) (Entered: 08/13/2003)
		* * *
09/17/2003	6	ANSWER to Complaint by The Bayaryn Jargal. (Attorney Robert A. Kandel from the Firm: Kaye, Scholer, LLP). Received in night deposit on 9/17/03. (jco) (Entered: 09/22/2003)
10/03/2003		PRETRIAL CONFERENCE held on 10/3/03 before Judge Richard C. Casey. (ae) (Entered: 11/13/2003)
10/10/2003	7	ORDER, plaintiff is entitled to only limited discovery on the issue of whether jurisdiction exists over defendant. No additional discovery is permitted at this time. An appropriate case management plan accompanies this Order. (signed by Judge Richard C. Casey); (kw) (Entered: 10/15/2003
		* * *

10/31/2003	9	NOTICE OF MOTION (filed on service date) by The Bayaryn Jargal., Jane Doe for an order dismissing the complaint in this action purs to Rule 12(b)(1) of the FRCP; Return Date not indicated; (djc) (Entered: 11/04/2003)
10/31/2003	10	MEMORANDUM OF LAW by The Bayaryn Jargal. in support of [9-1] motion for an order dismissing the complaint in this action purs to Rule 12(b)(1) of the FRCP. (djc) (Entered: 11/04/2003)

* * *

12/29/2003	13	AMENDED COMPLAINT against Jane Doe, The Bayaryn Jargalsaikhan. Document filed by The City of New York. (sb,) (Entered: 01/07/2004)

* * *

01/16/2004	16	MOTION (FILED ON SERVICE DATE) to Dismiss with Attached Affdvt of Gansukh Purevjav in Support of Motion. (Approved for Filing by RCC) Document filed by The Bayaryn Jargalsaikhan. (pa,) Modified on 1/28/2004 (pa,). (Entered: 01/28/2004)
01/20/2004	17	MEMORANDUM OF LAW in Support re: [16] MOTION (FILED ON SERVICE DATE) to Dismiss.. Document filed by The Bayaryn Jargalsaikhan. (pa,) (Entered: 01/28/2004)

* * *

05/17/2004	18	ORDER this order disposes of the motion listed at Numbers 9 and 16 of the Clerk's docket for this case. So Ordered. (Signed by Judge Richard C. Casey on 5/14/04) (jco,) (Entered 05/18/2004)

* * *

02/17/2005	22	MEMORANDUM OF LAW in Support re: [21] MOTION (FILED ON SERVICE DATE) to Dismiss. Document filed by The Bayaryn Jargalsaikhan. Received in night deposit box on 2/17/05 at 5:04 p.m. (yv,) (Entered: 04/07/2005)
02/17/2005	23	AFFIRMATION of Robert Negron, Jr. in Support re: [21] MOTION (FILED ON SERVICE DATE) to Dismiss. Document filed by The Bayaryn Jargalsaikhan. Received in night deposit box on 2/17/05 at 5:04 p.m. (yv,) (Entered: 04/07/2005)
02/17/2005	24	MEMORANDUM OF LAW in Opposition re: [21] MOTION (FILED ON SERVICE DATE) to Dismiss. Document filed by The Bayaryn Jargalsaikhan. Received in night deposit box on 2/17/05 at 5:04 p.m. (yv,) (Entered: 04/07/2005)
02/17/2005	25	DECLARATION of John R. Low-Beer in Opposition re: [21] MOTION (FILED ON SERVICE DATE) to Dismiss. Document filed by The City of New York. Received in night deposit box 2/17/05 at 5:05 p.m. (yv,) (Entered: 04/07/2005)

* * *

07/07/2005	26	MEMORANDUM & ORDER denying [21] Motion to Dismiss. The international practice that the immovable-property exception codifies and the legislative history of the FSIA demonstrate that defendants are not entitled to immunity from these claims because the tax liens place their and the City's rights in the Mission properties in issue. Accordingly, the Court may exercise jurisdiction under the FSIA to adjudicate the validity of those liens. It is worth emphasizing that this conclusion is not meant to have any impact on the separate question of whether the properties are immune from taxation. The premises may or may not be exempt from taxation; the Court merely holds today that it is empowered to make that determination. Defendants' motions to dismiss for lack of subject matter jurisdiction are therefore denied (Signed by Judge Richard C. Casey on 7/6/05) Original entry in 03cv3256 document number 34. (yv,) Additional attachments(s) added on 7/14/2005 (rag,). (Entered: 07/08/2005)

* * *

07/29/2005	27	ANSWER to Amended Complaint. Document filed by Republic of Mongolia. (cd,) (Entered: 08/02/2005)
08/03/2005	29	STIPULATION AND ORDER; defendants' time to answer or move against the Amended Complaint is extended through and including 7/29/05. (Signed by Judge Richard C. Casey on 8/3/05) (sac,) (Entered: 08/05/2005)

08/05/2005)	28	NOTICE OF INTERLOCUTORY APPEAL from 26 Order on Motion to Dismiss,,,. Document filed by The Bayaryn Jargalsaikhan. Filing fee $ 255.00, receipt number E551859. Copies of Notice of Interlocutory Appeal mailed to Attorney(s) of Record: Corporation Counsel. (nd,) (Entered: 08/05/2005)

* * *

US Court of Appeals for the Second Circuit

N.Y.C. v. The Bayaryn Jargal

8/8/05 Copy of notice of appeal and district court docket entries on behalf of APPELLANT Bayaryn Jargal-saikhan, filed. [JC]

10/3/05 Order filed stating: A pre-argument conference having been held herein and the court having been advised as to the progress of these appeals, IT IS HEREBY ORDERED that the appeals be and they hereby are CONSOLIDATED for all purposes. IT IS FURTHER ORDERED that the scheduling order filed in City of New York v. Permanent Mission, 05-4260-cv shall govern the progress of these appeals. {LG} [SG]

* * *

The City of New York v. Permanent Mission

8/8/05 Copy of notice of appeal and district court docket entries on behalf of APPELLANT The Permanent Mission of India to The United Nations, filed. NOTE: Forms C & D Due. [Entry date Aug 15 2005] [SG]

* * *

10/3/05 Order filed stating: A pre-argument conference having been held herein and the court having been advised as to the progress of these appeals, IT IS HEREBY ORDERED that the appeals be and they hereby are CONSOLIDATED for all purposes. IT IS FURTHER ORDERED that the scheduling order filed in City of New York v. Permanent Mission, 05-4260-cv shall govern the progress of these appeals. {LG} [Entry date Oct 4 2005] [SG]

* * *

10/21/05 APPELLANT Bayaryn Jargalsaikhan, The Permanent Mission of India to The United Nations, brief FILED with proof of service. [Entry date Oct 27 2005] [SG]

* * *

11/21/05 APPELLEE The City of New York, brief filed with proof of service. [Entry date Nov 22 2005] [SG]

* * *

12/5/05 APPELLANT Bayaryn Jargalsaikhan, The Permanent Mission of India to The United Nations, reply brief filed with proof of service. [Entry date Dec 6 2005] [SG]

* * *

1/9/06 Letter sent to: Parties requesting response of no more than ten single-spaced pages by 1/20/06, at noon. [Entry date Jan 9 2006] [AV]

* * *

2/23/06 Papers from the U.S. Department of Justice in response to the court's letter dated 1/9/2006, received. [Entry date Feb 24 2006] [SG]

* * *

3/16/06 APPELLEE The City of New York, LETTER BRIEF filed with proof of service. [Entry date Mar 17 2006] [SG]

3/16/06 APPELLANT The Permanent Mission of India to The United Nations, LETTER BRIEF filed with proof of service. [Entry date Mar 21 2006] [SG]

3/23/06 Reply Letter on Behalf of APPELLANT The Permanent Mission of India to The United Nations, received. [Entry date Mar 27 2006] [SG]

4/26/06 Judgment of the district court is Affirmed and Remanded by published signed opinion filed. (RAK) [Entry date Apr 26 2006] [SG]

* * *

5/17/06 Appellant The Permanent Mission of India to The United Nations motion stay the mandate filed with proof of service. [Entry date May 18 2006] [SG]

* * *

6/1/06 Order filed stating: IT IS HEREBY ORDERED that the motion to stay the mandate pending determination of petition for writ of certiorari in Supreme Court ... GRANTED. Before: Hon. RAK, PWH, ERK* {By: AA} [Entry date Jun 1 2006] [SG]

6/1/06 Order FILED GRANTING motion stay the mandate by Appellant The Permanent Mission of India to The United Nations, endorsed on motion dated 5/17/2006. {SEE ORDER DATED 6/1/2006} [Entry date Jun 1 2006] [SG]

* * *

THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE CITY OF NEW YORK, Plaintiffs, vs. THE PERMANENT MISSION OF INDIA TO THE UNITED NATIONS, GREAT AMERICA LEASING CORPORATION, and "JANE DOE #1" through "JANE DOE #20", the names of the last 20 defendants being unknown to the plaintiff, the persons or parties intended to be, persons or corporations, if any, having or claiming an interest in or lien upon the property described in the complaint. Defendants.	§	03 CV 3256 Judge Martin

NOTICE OF REMOVAL

(Filed May 3, 2003)

TO: United States District Court for the Southern District of New York:

Pursuant to 28 U.S.C. § 1441(d), defendant the Permanent Mission of India to the United Nations ("Permanent Mission of India"), hereby removes this action from the Supreme Court, New York County, to the United States District Court for the Southern District of New York, and alleges as follows:

1. On April 9, 2003, plaintiff filed an action in the Supreme Court, New York County captioned *The City of New York v. The Permanent Mission of India to the United Nations, et al.*, Index No. 03401201. In its complaint, plaintiff asserts a claim pursuant to Title 11 of the Administrative Code of the City of New York ("Administrative Code") allegedly to enforce payment of tax liens held by the City. Complaint ¶ 1.

2. The Permanent Mission of India is a foreign state as defined in 28 U.S.C. § 1603(a). *See, e.g., S & S Machinery Co., v. Masinexportimport*, 802 F. Supp. 1109, 1111 (S.D.N.Y. 1992) (under the FSIA, a diplomatic or consular mission is considered a "foreign state."); *City of Englewood v. Socialist People's Libyan Arab Jamahiriya*, 773 F.2d 31, 36-37 (1985).

3. Pursuant to 28 U.S.C. § 1441(d), this action may be removed to this Court because:

> Any civil action brought in a State court against a foreign state as defined in section 1603(a) of this title may be removed by the foreign state to the district court of the United States for the district and division embracing the place where such action is pending.

4. The United States District Court for the Southern District of New York embraces the county in which the state court action is now pending, and thus, this Court is a proper venue for this action pursuant to 28 U.S.C. § 84(a).

5. Subject to and without waiver of defendant's objections to the adequacy of service, copies of all process, pleadings and orders in the state court action are attached to this Notice of Removal.

6. This defendant is filing written notice of this removal with the Clerk of the State Court in which the action is currently pending pursuant to 28 U.S.C. § 1446(d). Copies of the Notice of Filing Notice of Removal, together with this Notice of Removal, are being served upon plaintiffs' counsel pursuant to 28 U.S.C. § 1446(d).

WHEREFORE, the defendant respectfully removes this action from the Supreme Court, New York County, to the United States District Court for the Southern District of New York, pursuant to 28 U.S.C. § 1441.

DATED this 8 day of May 2003.

Respectfully,
KAYE SCHOLER LLP

By: /s/ Robert A. Kandel
Robert A. Kandel (RK 6120)
John J. P. Howley (JH 9764)

425 Park Avenue
New York, NY 10022
(212) 836-8000

Attorneys for Defendant the Permanent Mission of India

SUPREME COURT OF THE STATE OF NEW YORK
CITY OF NEW YORK

----------X

THE CITY OF NEW YORK,

Plaintiff,

-against-

THE PERMANENT MISSION OF INDIA TO THE UNITED NATIONS, GREAT AMERICA LEASING CORPORATION, and "JANE DOE #1" through "JANE DOE #20", the names of the last 20 defendants being unknown to the plaintiff, the persons or parties intended to be, persons or corporations, if any, having or claiming an interest in or lien upon the property described in the complaint.

Defendants.

----------X

NOTICE OF SUIT PURSUANT TO 28 U.S.C. § 1608(a)

Index No. 03401201

NOTICE OF SUIT

1. *Title of Proceeding; Full Name of Court; Case or Docket Number:* The City of New York, Plaintiff, Against The Permanent Mission of India to the United Nations, GreatAmerica Leasing Corporation, and "Jane Doe #1" through "Jane Doe #20", the Names of the Last 20 Defendants Being Unknown to Plaintiff, the Persons or Parties Intended to Be Persons or Corporations, if any, Having or Claiming an Interest in or Lien Upon the Property Described in the Complaint, Defendants. Supreme Court of

the State of New York, County of New York. Index No: 03401201.

2. *Name of Foreign State or Political: Subdivision) Concerned:* The Permanent Mission of India to the United Nations.

3. *Identity of the Other Parties:* The City of New York, a municipal corporation duly organized and existing under the laws of the State of New York, having its principal place of business at City Hall, New York, New York 10007 (Plaintiff); GreatAmerica Leasing Corporation, a foreign corporation having an address at P.O. Box 609, Cedar Rapids, Iowa 52406 (Defendant); and Jane Doe #1 through Jane Doe #20, persons or corporations and other lienors, if any, who may have or claim to have an interest in or lien against the property that is the subject of this suit (Defendants).

JUDICIAL DOCUMENTS

4. *Nature of the Documents Served:* Summons and Verified Complaint.

5. *Nature and Purpose of the Proceeding; Why the Foreign State Has Been Named; Relief Requested:* This legal proceeding relates to the parcel of real property located in the Borough of Manhattan, County of New York, City and State of New York at 235 East 43rd Street, New York, New York 10017 (a parcel also known on the Tax Map of the City of New York as Manhattan Block 1317 Lot 20). The Permanent Mission of India has been named as a defendant in this legal proceeding because it is the owner of record of such property and, as such, is responsible by law for the payment of real property taxes and other real property charges attributable to the property. As set forth in detail in

the Verified Complaint, the Permanent Mission of India has failed to pay taxes assessed against portions of the property used for non-exempt purposes and other charges attributable to the property as a whole, which additionally results in the imposition of statutory interest at a rate of 18% per year and creates tax liens against the property for the outstanding taxes, charges and interest. As of February 1, 2003, the unpaid principal balance for real estate taxes and charges for the property was $4,876,542.20. The statutory interest which has accrued on the unpaid taxes and other charges as of February 1, 2003 was $11,500,159.89. The total outstanding amount of taxes, charges and interest as of February 1, 2003 was $16,376,702.09. The Permanent Mission of India is not immune from liability for such taxes, charges and interest under local, state, federal, or international law. This proceeding is an action seeking foreclosure of the tax liens, a judgment in favor of the City of New York establishing the validity of the tax liens held by the City, a judgment of foreclosure directing that the defendants, including the Permanent Mission of India, pay the City all outstanding real property taxes, charges and interest thereon ($16,376,702.09 as of February 1, 2003) on the parcel of real property referred to above.

6. A response to the Summons and Verified Complaint is required to be submitted to the Court not later than 60 days after these documents are received. The response may present jurisdictional defenses (including defenses relating to state immunity).

7. The failure to submit a timely response with the Court can result in a default judgment and a request for execution to satisfy the judgment. If a default judgment has been entered, a procedure may be available to vacate or open that judgment.

8. Questions relating to state immunities and to the jurisdiction of Courts over foreign states are governed by the Foreign Sovereign Immunities Act of 1976, which appears in sections 1330, 1391(f), 1441(d), and 1602 through 1611 of Title 28 of the United States Code (Pub. L. No. 94-583; 90 Stat. 2891). As required by 22 C.F.R. § 93.2(e), attached is a copy of the Foreign Sovereign Immunities Act of 1976.

Dated: New York, New York
April 2, 2003

MICHAEL A. CARDOZO
Corporation Counsel of
the City of New York
Attorney for the Plaintiff
100 Church Street
Room 5-216
New York, N.Y. 10007
(212) 788-0445

/s/ Robert J. Paparella
By ROBERT J. PAPARELLA
Assistant Corporation Counsel

To: Permanent Mission of India to the United Nations
750 Third Avenue
New York, New York 10017

GreatAmerica Leasing
P.O. Box 609
Cedar Rapids, Iowa 52406-0609

Ministry of External Affairs
Government of India
Akbar Bhawan, Chanakya Puri
New Delhi – 110 021, INDIA
Attention: Hon. Yashwant Sinha

Index No.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

THE CITY OF NEW YORK,

Plaintiff,

-against-

THE PERMANENT MISSION OF INDIA TO THE UNITED NATIONS, GREATAMERICA LEASING CORPORATION, and "JANE DOE #1" through "JANE DOE #20", the names of the last 20 defendants being unknown to plaintiff, the persons or parties intended to be, persons or corporations, if any, having or claiming an interest in or lien upon the property described in the complaint,

Defendants.

NOTICE OF SUIT PURSUANT TO 28 U.S.C. § 1608(a)

MICHAEL A. CARDOZO
Corporation Counsel of the City of New York
Attorney for Defendants
100 Church Street
New York, N.Y. 10007

Of Counsel: Robert J. Paparella
Tel: (212) 788-0445
NYCLIS No.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

---------- x

THE CITY OF NEW YORK,

Plaintiff,

-against-

THE PERMANENT MISSION OF INDIA, TO THE UNITED NATIONS, GREATAMERICA LEASING CORPORATION, and "JANE DOE #1" "JANE DOE #20", the names of the last 20 defendants being unknown to plaintiff, the persons or parties intended to be, persons or, corporations, if any, having or claiming an interest in or lien upon the property described in the complaint,

Defendants.

---------- x

SUMMONS

Index No. 03401201

TO THE ABOVE NAMED DEFENDANTS:

PLEASE TAKE NOTICE THAT YOU ARE HEREBY SUMMONED and required to serve upon Plaintiff's attorneys an answer to the verified complaint in this action within sixty (60) days after the service of this summons, exclusive of the day of service, pursuant to 28 U.S.C. § 1608. In case of your failure to answer timely, judgment will be taken against you by default for the relief demanded in the verified complaint.

NEW YORK County is designated as the basis of venue because the real property that is the subject of this

action is situated and located within New York County. The nature of and the relief sought in this action is the foreclosure of tax liens, a Judgment in favor of the City establishing the validity of the tax liens held by the City, a Judgment of Foreclosure directing that the Defendants pay the City all outstanding real property taxes, other charges and interest thereupon, on the parcel of real property located in the Borough of Manhattan, County of New York, City and State of New York, designated on the Tax Map of the City of New York for the Borough of Manhattan as Block 1317 Lot 20 and more fully described in the verified complaint.

Dated: New York, New York
April 2, 2003

MICHAEL A. CARDOZO
Corporation Counsel of
the City of New York
Attorney for the Plaintiff
100 Church Street
Room 5-216
New York, N.Y. 10007
(212) 788-0445

/s/ Robert J. Paparella
By: ROBERT J. PAPARELLA
Assistant Corporation Counsel

To: Permanent Mission of India to the United Nations
750 Third Avenue
New York, New York 10017

GreatAmerica Leasing
P.O. Box 609
Cedar Rapids, Iowa 52406-0609

Ministry of External Affairs
Government of India
Akbar Bhawan, Chanakya Puri
New Delhi – 110 021, INDIA
Attention: Hon. Yashwant Sinha

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

---------- x

THE CITY OF NEW YORK,

Plaintiff,

-against-

THE PERMANENT MISSION OF INDIA, TO THE UNITED NATIONS, GREATAMERICA LEASING CORPORATION, and "JANE DOE #1" "JANE DOE #20", the names of the last 20 defendants being unknown to plaintiff, the persons or parties intended to be, persons or, corporations, if any, having or claiming an interest in or lien upon the property described in the complaint,

Defendants.

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VERIFIED COMPLAINT FOR FORECLOSURE OF TAX LIENS AND OTHER RELIEF

Index No. 03401201

Plaintiff, the City of New York (the "City"), by its attorney, MICHAEL A. CARDOZO, Corporation Counsel of the City of New York, as and for its Verified Complaint, alleges as follows:

NATURE OF THE ACTION

1. This action is brought pursuant to Title 11 of the Administrative Code of the City of New York ("Admin. Code") to enforce payment of tax liens held by the City. The City seeks a Judgment of Foreclosure establishing the validity of the tax liens held by the City resulting

from real property taxes and other charges and interest thereupon which are due and owing to the City. Section 11-354 provides that the City may maintain an action in the Supreme Court for the enforcement and/or foreclosure of tax liens which remain due and unpaid for at least one year, and for other remedies and procedures provided by law.

2. The following property is the subject of this action: 235 East 43rd Street, New York, New York 10017, a parcel also known on the Tax Map of the City of New York as Manhattan Block 1317 Lot 20 ("Subject Parcel").

3. The subject property is improved with a 26 story residential apartment building containing a gross building area of 87,151 square feet.

4. As of February 1, 2003, the total outstanding amount for real estate taxes, other charges and interest was $16,376,702.09.

5. The Defendant Permanent Mission of India to the United Nations is subject to suit pursuant to Sections § 1605(a)(2) and § 1605(a)(4) of the Foreign Sovereign Immunities Act. 28 U.S.C. §§ 1330, 1602-1611.

VENUE

6. Venue is proper in this Court, pursuant to Section 11-335 of the Admin. Code and Section 507 of the New York Civil Practice Law and Rules because the judgment demanded in this action would affect title to, or the possession, use, or enjoyment of, real property situated in the County of New York.

THE PARTIES

7. Plaintiff is a municipal corporation duly organized and existing under the laws of the State of New York, having its principal place of business at City Hall, New York, New York 10007.

8. The Defendant Permanent Mission of India to the United Nations, whose address of record is 750 Third Avenue, New York, New York, 10017, is named as a party-defendant because it is the owner of the Subject Parcel. The Permanent Mission of India to the United Nations acquired title to the Subject Parcel from Second Avenue Commercial, Inc., by deed dated September 8, 1980. The deed was recorded on September 10, 1980 in reel 536, page 1262.

9. GreatAmerica Leasing Corporation, a foreign corporation having an address at P.O. Box 609, Cedar Rapids, Iowa 52406, is named as a party-defendant to bar it from any right, title or interest that it may have in the subject property as the holder of an interest in the property pursuant to UCC-1 Financing Statement No 99PN62032 filed in the City Register's Office of New York County on November 16, 1999.

10. Defendants Jane Doe #1 through Jane Doe #20 are named as party-defendants to represent persons or corporations and other lienors, if any, who may have or claim to have an interest in or lien against the Subject Parcel. Plaintiff will submit the true names and interest of Jane Doe #1 – Jane Doe #20 as and when Plaintiff learns of their true names and interest.

DEFENDANTS' INTERESTS ARE SUBORDINATE

11. Each of the defendants named in this action claims to have or may have some right, title, interest or lien in or to the Subject Parcel or some part thereof, which right, title, interest or lien, if any, is subject and subordinate to the tax liens.

DELINQUENT TAXES AND ASSESSMENTS

12. Taxes, other charges and interest due and owing to the City and the dates on which such taxes and other charges came due are set forth on the following pages:

Manhattan Block 1317 Lot 20

235 East 43rd St., New York, N.Y. 10017

Owner: Permanent Mission of India to the United Nations

Charge Type	Date Due	Principal Amount Due	Interest Amount Due
Sidewalk Repair	08/28/85	$1160.78	$19080.89
Sidewalk Repair	10/28/88	1437.50	16690.26
Additional Real Estate Tax	03/01/91	1017.00	1968.09
Real Estate Tax	07/01/91	147497.95	1040839.66
Real Estate Tax	01/01/92	147497.95	937782.17
Real Estate Tax	07/01/92	170633.10	977122.42
Real Estate Tax	01/01/93	170633.10	877584.37
Elevator Charge	03/28/93	260.00	879.28
Real Estate Tax	07/01/93	230448.04	1064360.33
Real Estate Tax	01/01/94	230448.04	952069.26
Real Estate Tax	07/01/94	221285.31	817274.31

Real Estate Tax	01/01/95	238316.91	783176.85
Elevator Charge	06/28/95	65.00	138.19
Elevator Charge	02/28/1995	195.00	445.37
Real Estate Tax	07/01/95	228053.45	65996.67
Real Estate Tax	01/01/96	228053.45	588461.00
Real Estate Tax	07/01/96	230434.85	523798.33
Real Estate Tax	01/01/97	219094.85	435830.27
Elevator Charge	08/28/97	260.00	327.00
Real Estate Tax	07/01/97	204622.71	354822.65
Real Estate Tax	01/01/98	198603.51	297294.96
Real Estate Tax	07/01/98	200578.90	257494.91
Elevator Charge	12/28/98	260.00	220.55
Real Estate Tax	01/01/99	205503.70	223115.74
Real Estate Tax	07/01/99	206589.21	187508.78
Real Estate Tax	01/01/00	189694.41	140791.63
Elevator Charge	02/28/00	260.00	143.22
Real Estate Tax	07/01/00	198663.22	117743.94
Real Estate Tax	01/01/01	189872.64	86308.00
Real Estate Tax	07/01/01	194777.82	64350.40
Real Estate Tax	01/01/02	192544.50	41397.57
Elevator Charge	03/28/02	260.00	35.20
Real Estate Tax	07/01/02	194421.60	21634.28
Real Estate Tax	01/01/03	233097.70	3473.34

Total Principal Charges: $ 4,876,542.20

Total Interest Charges: $ 11,500,159.89

Grand Total: $ 16,376,702.09

13. As of February 1, 2003, the unpaid principal balance for real estate taxes and other charges for the Subject Parcel was $4,876,542.20 The statutory interest which has accrued on the unpaid taxes and other charges as of February 1, 2003 was $11,500,159.89. The total outstanding amount of taxes, other charges, and interest as of February 1, 2003 was $16,376,702.09.

JUDGMENT DECLARING VALIDITY OF TAX LIENS

14. The City requests that the Court impose a Judgment on the Defendants declaring the validity of the tax liens in the amount outstanding on the Subject Parcel pursuant to Admin. Code § 11-354 and § 11-338.

JUDGMENT OF FORECLOSURE

15. The City requests that in the event that this action proceeds to a Judgment of Foreclosure on the Subject Parcel pursuant to Admin. Code § 11-354 and § 11-338, that the Court issue a Judgment directing the Defendant Permanent Mission of India to the United Nations to pay the Plaintiff the amount of real property taxes, other charges and interest cited above, subject to the following:

a. Any state of facts that an inspection of the exempt and/or non-exempt use of the Subject Parcel would disclose;

b. Any state of facts that an accurate survey of the Subject Parcel would show;

c. Any taxes, assessments, emergency repair liens, water and sewer rents and other charges that hereinafter become liens against the property; and

d. Prior liens of record not set forth in this Verified Complaint, if any.

ELECTION OF REMEDIES AND NO WAIVER OF OTHER REMEDIES

16. No other action or proceeding has been commenced or is now pending at law or otherwise to foreclose the tax lien or to recover the debt owed by the Defendant Permanent Mission of India to the United Nations.

17. In the event that the Plaintiff possesses any other liens against the property, either by way of judgment, or otherwise, Plaintiff requests that such other lien(s) shall not be merged in Plaintiff's cause of action set forth in this complaint, but that Plaintiff shall be permitted to enforce said other lien(s) and/or seek determination of priority thereof in any other independent action(s), proceeding(s), including without limitation, any surplus money proceedings.

18. By this action, the City does not waive and reserves its right to commence any additional and supplementary proceedings, procedures or remedies provided by law.

WHEREFORE, Plaintiff demands judgment ordering:

1. That a Judgment in favor of the City establishing the validity of the tax lien in the amount outstanding be entered against the Defendants pursuant to Admin. Code § 11-338;

2. That a Judgment of Foreclosure be entered in favor of the City and against the Defendants directing that

the Defendants pay the amount of taxes, interest and other charges due as set forth above, together with other amounts which would accrue up to the time of such payment and the expenses of the foreclosure, along with costs, including attorneys fees, expense allowances, and disbursements of the action;

3. That the Defendants and each of them and all persons claiming under them or any of them subsequent to the filing of the notice of pendency of this action in the Office of the Clerk of the County of New York, in which County the property is situated, be barred and forever foreclosed of and from all estate, right, interest, claim, or lien, in, to, or on the Subject Parcel and each and every part of it; and

4. That the City have such other and further relief as the Court may deem just and proper.

Dated: New York, New York
April 2, 2003

MICHAEL A. CARDOZO
Corporation Counsel of
the City of New York
Attorney for the Plaintiff
100 Church Street
Room 5-216
New York, N.Y. 10007
(212) 788-0445

/s/ Robert J. Paparella
By: ROBERT J. PAPARELLA
Assistant Corporation Counsel

VERIFICATION

STATE OF NEW YORK)
:SS.:
COUNTY OF NEW YORK)

Sam Miller, being duly sworn, deposes and says that deponent is a Assistant Commissioner with the Finance Department of the City of New York, the Plaintiff herein, that deponent has read the forgoing Verified Complaint and knows the contents hereof; and states the same is true to deponent's own knowledge except as to the matters stated to be alleged upon information and belief, and as to those matters, deponent believes them to be true.

The grounds of deponent's belief as to all matters in the Verified Complaint not stated upon deponent's knowledge, are the official books and records of the City and conversations with employees of the City.

/s/ Sam Miller
Sam Miller
Assistant Commissioner
of Finance

Sworn to before me this
2nd day of April, 2003

/s/ Peter Byrne
NOTARY PUBLIC

PETER BYRNE
Notary Public, State of New York
No. 01BY4608467
Qualified in Queens County
Commission Expires Oct. 31, 2005

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE CITY OF NEW YORK, Plaintiffs, -against- THE BAYARYN JARGAL-SAIKHAN, AS PRINCIPAL RESIDENT REPRESENTATIVE TO THE UNITED NATIONS OF THE MONGOLIAN PEOPLE'S REPUBLIC, and "JANE DOE #1" through "JANE DOE #20", the names of the last 20 defendants being unknown to plaintiff, the persons or parties intended to be, persons or corporations, if any, having or claiming an interest in or lien upon the property described in the complaint, Defendants.	Docket No. 03 CV 6086

NOTICE OF REMOVAL

TO: United States District Court for the Southern District of New York:

Pursuant to 28 U.S.C. § 1441(d), defendant Bayaryn Jargal Saikhan, as Principal Resident Representative to the United Nations of the People's Republic of Mongolia ("The People's Republic of Mongolia"), hereby removes this action from the Supreme Court, New York County, to the

United States District Court for the Southern District of New York, and alleges as follows:

1. On April 9, 2003, plaintiff filed an action in the Supreme Court, New York County captioned *The City of New York v. The Bayaryn Jargal Saikhan, as Principal Resident Representative to the United Nations of the Mongolian People's Republic, et al.,* Index No. 03401200. In its complaint, plaintiff asserts a claim pursuant to Title 11 of the Administrative Code of the City of New York ("Administrative Code") allegedly to enforce payment of tax liens held by the City. Complaint ¶ 1.

2. The People's Republic of Mongolia is a foreign state as defined in 28 U.S.C. § 1603(a). *See, e.g., S & S Machinery Co., v. Masinexportimport,* 802 F. Supp. 1109, 1111 (S.D.N.Y. 1992) (under the FSIA, a diplomatic or consular mission is considered a "foreign state."); *City of Englewood v. Socialist People's Libyan Arab Jamahiriya,* 773 F.2d 31, 36-37 (1985).

3. Pursuant to 28 U.S.C. § 1441(d), this action may be removed to this Court because:

> Any civil action brought in a State court against a foreign state as defined in section 1603(a) of this title may be removed by the foreign state to the district court of the United States for the district and division embracing the place where such action is pending.

4. The United States District Court for the Southern District of New York embraces the county in which the state court action is now pending, and thus, this Court is a proper venue for this action pursuant to 28 U.S.C. § 84(a).

5. Subject to and without waiver of defendant's objections to the adequacy of service, copies of all process, pleadings and orders in the state court action are attached to this Notice of Removal.

6. This defendant is filing written notice of this removal with the Clerk of the State Court in which the action is currently pending pursuant to 28 U.S.C. § 1446(d). Copies of the Notice of Filing Notice of Removal, together with this Notice of Removal, are being served upon plaintiffs' counsel pursuant to 28 U.S.C. § 1446(d).

WHEREFORE, the defendant respectfully removes this action from the Supreme Court, New York County, to the United States District Court for the Southern District of New York, pursuant to 28 U.S.C. § 1441.

DATED this 12th day of August 2003.

Respectfully,
KAYE SCHOLER LLP

By: /s/ Robert A. Kandel
Robert A. Kandel (RK 6120)
John J.P. Howley (JH 9764)

425 Park Avenue
New York, NY 10022
(212) 836-8000

Attorneys for Defendant the People's Republic of Mongolia

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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THE CITY OF NEW YORK,

Plaintiff,

-against-

THE BAYARYN JARGAL-SAIKHAN, AS PRINCIPAL RESIDENT REPRESENTATIVE TO THE UNITED NATIONS OF THE MONGOLIAN PEOPLE'S REPUBLIC, and "JANE DOE #1" through "JANE DOE #20", the names of the last 20 defendants being unknown to plaintiff, the persons or parties intended to be, persons or corporations, if any, having or claiming an interest in or lien upon the property described in the complaint,

Defendants.

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SUMMONS

Index No.

(Filed Apr. 09, 2003)

03401200

TO THE ABOVE NAMED DEFENDANTS:

PLEASE TAKE NOTICE THAT YOU ARE HEREBY SUMMONED and required to serve upon Plaintiff's attorneys an answer to the verified complaint in this action within sixty (60) days after the service of this summons, exclusive of the day of service, pursuant to 28 U.S.C. §1608. In case of your failure to answer timely, judgment will be taken against you by default for the relief demanded in the verified complaint.

NEW YORK County is designated as the basis of venue because the real property that is the subject of this action is situated and located within New York County. The nature of and the relief sought in this action is the foreclosure of tax liens, a Judgment in favor of the City establishing the validity of the tax liens held by the City, and a Judgment of Foreclosure directing that the Defendants pay the City all outstanding real property taxes, other charges and interest thereupon on the parcel of real property located in the Borough of Manhattan, County of New York, City and State of New York, designated on the Tax Map of the City of New York for the Borough of Manhattan as Block 1391 Lot 68 and more fully described in the verified complaint.

Dated: New York, New York
April 2, 2003

MICHAEL A. CARDOZO
Corporation Counsel of
the City of New York.
Attorney for the Plaintiff
100 Church Street
Room 5-216
New York, N.Y. 10007
(212) 788-0445

/s/ Robert J. Paparella
By: ROBERT J. PAPARELLA
Assistant Corporation Counsel

To: Mongolian People's Republic
6 East 77th Stret
New York, New York 10021

Bayaryn Jargalsaikhan,
Principal Resident Representative to the
United Nations of the People's Republic of Mongolia
6 East 77th Street
New York, New York 10021

Bayaryn Jargalsaikhan,
Principal Resident Representative to the
United Nations of the People's Republic of Mongolia
330 East 46th Street
New York, New York

Ministry of Foreign Affairs
Government of Mongolia
Peace Ave. 7A, Ulaanbaatar
210648 MONGOLIA
Attention: Hon. Luvsangiin Erdenechuluun,

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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THE CITY OF NEW YORK,

Plaintiff,

-against-

THE BAYARYN JARGALSAIKHAN, AS PRINCIPAL RESIDENT REPRESENTATIVE TO THE UNITED NATIONS OF THE MONGOLIAN PEOPLE'S REPUBLIC, and "JANE DOE #1" through "JANE DOE #20", the names of the last 20 defendants being unknown to plaintiff, the persons or parties intended to be, persons or corporations, if any, having or claiming an interest in or lien upon the property described in the complaint,

Defendants.

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VERIFIED COMPLAINT FOR FORECLOSURE OF TAX LIENS AND OTHER RELIEF

Index No.

Plaintiff, the City of New York (the "City"), by its attorney, MICHAEL A. CARDOZO, Corporation Counsel of the City of New York, as and for its Verified Complaint, alleges as follows:

NATURE OF THE ACTION

1. This action is brought pursuant to Title 11 of the Administrative Code of the City of New York ("Admin. Code") to enforce payment of tax liens held by the City. The City seeks a Judgment of Foreclosure establishing the validity of the tax liens held by the City resulting from

real property taxes and other charges and interest thereupon which are due and owing to the City. Section 11-354 provides that the City may maintain an action in the Supreme Court for the enforcement and/or foreclosure of tax liens which remain due and unpaid for at least one year, and for other remedies and procedures provided by law.

2. The following property is the subject of this action: 6 East 77th Street, New York, New York 10021, a parcel also known on the Tax Map of the City of New York as Manhattan Block 1391 Lot 68 (the "Subject Parcel").

3. The Subject Parcel is improved with an 5 story building containing a gross building area of 10,524 square feet.

4. As of February 1, 2003, the outstanding balance of tax liens for real property taxes, interest and other charges was $2,068,995.00.

5. The Defendant Bayaryn Jargalsaikhan, as Principal Resident Representative to the United Nations of the Mongolian People's Republic is subject to suit pursuant to Sections § 1605(a)(2) and §1605(a)(4) of the Foreign Sovereign Immunities Act. 28 U.S.C. §§ 1330, 1602-1611.

VENUE

6. Venue is proper in this Court, pursuant to Section 11-335 of the Admin. Code and Section 507 of the New York Civil Practice Law and Rules because the judgment demanded in this action would affect title to, or the possession, use, or enjoyment of, real property situated in the County of New York.

THE PARTIES

7. Plaintiff is a municipal corporation duly organized and existing under the laws of the State of New York, having its principal place of business at City Hall, New York, New York 10007.

8. The Defendant Bayaryn Jargalsaikhan, as Principal Resident Representative to the United Nations of the Mongolian People's Republic, whose address of record is 330 East 46th Street, New York, New York, New York 10017, is named as a party-defendant because it is the

* * *

Charge Type	Date Due	Principal Amount Due	Interest Amount Due
Real Estate Tax	04/01/81	$1611.00	$40696.75
Real Estate Tax	07/01/81	2013.75	49990.57
Real Estate Tax	10/01/81	2013.75	48729.70
Real Estate Tax	01/01/82	2013.75	47468.76
Real Estate Tax	04/01/82	2013.75	46235.21
Real Estate Tax	06/30/82	0.00	1976.71
Real Estate Tax	07/01/82	1733.44	38725.79
Real Estate Tax	10/01/82	1733.44	37746.75
Real Estate Tax	01/01/83	3466.88	73535.65
Real Estate Tax	07/01/83	3746.10	75295.73
Real Estate Tax	01/01/84	3746 10	72260.23
Real Estate Tax	07/01/84	3931.20	72679.78
Real Estate Tax	01/01/85	3931.20	69108.19
Real Estate Tax	07/01/85	3931.20	65594.77
Real Estate Tax	01/01/86	3931.20	62505.77

Real Estate Tax	07/01/86	4272.39	64628.31
Real Estate Tax	01/01/87	4272.39	61271.19
Real Estate Tax	06/30/87	779.21	10575.79
Real Estate Tax	07/01/87	4336.85	58843.47
Real Estate Tax	01/01/88	4336.85	55648.69
Real Estate Tax	07/01/88	4657.00	52818.50
Add. Real Tax	07/01/89	4899.76	51902.85
Real Estate Tax	01/01/90	4899.76	47330.95
Real Estate Tax	02/28/90	106.43	996.78
Real Estate Tax	07/01/90	5101.00	44592.76
Real Estate Tax	03/01/91	82.92	628.89
Real Estate Tax	01/01/91	5101.00	40055.09
Real Estate Tax	07/01/91	5982.94	42219.44
Real Estate Tax	01/01/92	5982.94	38039.14
Real Estate Tax	01/01/88	4336.85	55648.69
Real Estate Tax	07/01/88	4657.00	56363.42
Real Estate Tax	01/01/89	4657.00	52818.50
Real Estate Tax	07/01/89	4899.76	51902.85
Real Estate Tax	01/01/90	4899.76	47330.95
Real Estate Tax	02/28/90	106.43	996.78
Real Estate Tax	07/01/90	5101.00	44592.76
Real Estate Tax	03/01/91	82.92	628.89
Real Estate Tax	01/01/91	5101.00	40055.09
Real Estate Tax	07/01/91	5982.94	42219.44
Real Estate Tax	01/01/92	5982.94	38039.14

Real Estate Tax	07/01/92	6073.26	34778.24
Real Estate Tax	01/01/93	6073.26	31235.43
Real Estate Tax	07/01/93	6444.62	29765.49
Real Estate Tax	01/01/94	6444.62	26625.20
Real Estate Tax	07/01/94	6797.98	25107.02
Real Estate Tax	01/01/95	6506.86	21383.38
Real Estate Tax	07/01/95	6671.70	19483.72
Real Estate Tax	01/01/96	6671.70	17215.42
Additional Real Estate Tax	07/01/96	7072.00	16075
Real Estate Tax	01/01/97	7151.12	14225.23
Real Estate Tax	07/01/97	7218.88	12517.78
Real Estate Tax	01/01/98	7304.54	10934.36
Real Estate Tax	07/01/98	7697.30	9881.48
Real Estate Tax	01/01/99	7856.22	8529.51
Real Estate Tax	07/01/99	8182.22	7426.52
Real Estate Tax	01/01/00	8489.76	6301.12
Real Estate Tax	07/01/00	2084.04	1235.17
Real Estate Tax	01/01/01	2116.88	962.24
Real Estate Tax	07/01/01	2226.46	735.57
Real Estate Tax	01/01/02	2366.50	508.80
Real Estate Tax	07/01/02	2331.14	259.40
Real Estate Tax	01/01/03	2909.03	43.35

Total Principal Charges: $ 230,042.27

Total Interest Charges: $1,838,952.73

Grand Total Charges $2,068,995.00

12. As of February 1, 2003, the unpaid principal balance for taxes and other charges for the Subject Parcel was $230,042.27. The statutory interest which has accrued on the unpaid taxes and other charges as of February 1, 2003 was $1,838,952.73. The total amount outstanding of taxes, other charges, and interest as of February 1, 2003 was $2,068,995.00

JUDGMENT DECLARING VALIDITY OF TAX LIENS

13. The City requests that the Court impose a Judgment on the Defendants declaring the validity of the tax liens in the amount outstanding on the Subject Parcel pursuant to Admin. Code § 11-354 and § 11-338.

JUDGMENT OF FORECLOSURE

14. The City requests that in the event that this action proceeds to a Judgment of Foreclosure on the Subject Parcel pursuant to Admin. Code § 11-354 and § 11-338, that the Court issue a Judgment directing the Defendant Bayaryn Jargalsaikhan, as Principal Resident Representative to the United Nations of the Mongolian People's Republic, to pay the Plaintiff the amount of real property taxes, other charges and interest cited above, subject to the following:

a. Any state of facts that an inspection of the exempt and/or non-exempt use of the Subject Parcel would disclose;

b. Any state of facts that an accurate survey of the Subject Parcel would show;

c. Any taxes, assessments, emergency repair liens, water and sewer rents and other charges that hereinafter become liens against the property; and

d. Prior liens of record not set forth in this Verified Complaint, if any.

ELECTION OF REMEDIES AND NO WAIVER OF OTHER REMEDIES

15. No other action or proceeding has been commenced or is now pending at law or otherwise to foreclose the tax lien or to recover the debt owed by the Defendant Bayaryn Jargalsaikhan, as Principal Resident Representative to the United Nations of the People's Republic of Mongolia.

16. In the event that the Plaintiff possesses any other liens against the property, either by way of judgment, or otherwise, Plaintiff requests that such other lien(s) shall not be merged in Plaintiff's cause of action set forth in this complaint, but that Plaintiff shall be permitted to enforce said other lien(s) and/or seek determination of priority thereof in any other independent action(s), proceeding(s), including without limitation, any surplus money proceedings.

17. By this action, the City does not waive and reserves its right to commence any additional and supplementary proceedings, procedures or remedies provided by law.

WHEREFORE, Plaintiff demands judgment ordering:

1. That a Judgment in favor of the City establishing the validity of the tax lien in the amount outstanding be entered against the Defendants;

2. That a Judgment of Foreclosure be entered in favor of the City and against the Defendants directing that the Defendants pay the amount of taxes, interest and other charges due as set forth above, together with other amounts which would accrue up to the time of such payment, as well as the expenses of the foreclosure, along with costs, including attorneys fees, expense allowances, and disbursements of the action;

3. That the Defendants and each of them and all persons claiming under them or any of them subsequent to the filing of the notice of pendency of this action in the Office of the Clerk of the County of New York, in which County the property is situated, be barred and forever foreclosed of and from all estate, right, interest, claim, lien, in, to, or on the Subject Parcel and each and every part of it; and

4. That the City have such other and further relief as the Court may deem just and proper.

Dated: New York, New York
April 2, 2003

MICHAEL A. CORDOZO
Corporation Counsel of
the City of New York
Attorney for the Plaintiff
100 Church Street
Room 5-216
New York, N.Y. 10007
(212) 788-0445
/s/ Robert J. Paparella
ROBERT J. PAPARELLA
Assistant Corporation Counsel

VERIFICATION

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

Sam Miller, being duly sworn, deposes and says that deponent is a Assistant Commissioner with the Finance Department of the City of New York, the Plaintiff herein, that deponent has read the forgoing Verified Complaint and knows the contents hereof; and states the same is true to deponent's own knowledge, except as to the matters stated to be alleged upon information and belief, and as to those matters, deponent believes them to be true.

The grounds of deponent's belief as to all matters in the Verified Complaint not stated upon deponent's knowledge are the official books and records of the City and conversations with employees of the City.

/s/ Sam Miller
Sam Miller
Assistant Commissioner
of Finance

Sworn to before me this 2nd
day of April, 2003

/s/ Peter Byrne
NOTARY PUBLIC

PETER BYRNE
Notary Public, State of New York
No. 01BY4608467
qualified in Queens County
Commission Expires Oct. 31, 2001

[Affidavit Of Service Omitted In Printing]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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THE CITY OF NEW YORK,	**SUMMONS**
Plaintiff,	Index No.
-against-	(Filed Apr. 9, 2003)
THE BAYARYN JARGALSAIKHAN, AS PRINCIPAL RESIDENT REPRESENTATIVE TO THE UNITED NATIONS OF THE MONGOLIAN PEOPLE'S REPUBLIC, and "JANE DOE #1" through "JANE DOE #20", the names of the last 20 defendants being unknown to plaintiff, the persons or parties intended to be, persons or corporations, if any, having or claiming an interest in or lien upon the property described in the complaint,	03401200
Defendants.	

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TO THE ABOVE NAMED DEFENDANTS:

PLEASE TAKE NOTICE THAT YOU ARE HEREBY SUMMONED and required to serve upon Plaintiff's attorneys an answer to the verified complaint in this action within sixty (60) days after the service of this summons, exclusive of the day of service, pursuant to 28 U.S.C. §1608. In case of your failure to answer timely, judgment will be taken against you by default for the relief demanded in the verified complaint.

NEW YORK County is designated as the basis of venue because the real property that is the subject of this

action is situated and located within New York County. The nature of and the relief sought in this action is the foreclosure of tax liens, a Judgment in favor of the City establishing the validity of the tax liens held by the City, and a Judgment of Foreclosure directing that the Defendants pay the City all outstanding real property taxes, other charges and interest thereupon on the parcel of real property located in the borough of Manhattan, County of New York, City and State of New York, designated on the Tax Map of the City of New York for the Borough of Manhattan as Block 1391 Lot 68 and more fully described in the verified complaint.

Dated: New York, New York
April 2, 2003

MICHAEL A. CORDOZO
Corporation Counsel of
the City of New York
Attorney for the Plaintiff
100 Church Street
Room 5-216
New York, N.Y. 10007
(212) 788-0445

/s/ Robert J. Paparella
ROBERT J. PAPARELLA
Assistant Corporation Counsel

To: Mongolian People's Republic
6 East 77th Stret
New York, New York 10021

Bayaryn Jargalsaikhan,
Principal Resident Representative to the
United Nations of the People's Republic of Mongolia
6 East 77th Street
New York, New York 10021

Bayaryn Jargalsaikhan,
Principal Resident Representative to the
United Nations of the People's Republic of Mongolia
330 East 46th Street
New York, New York

Ministry of Foreign Affairs
Government of Mongolia
Peace Ave. 7A, Ulaanbaatar
210648 MONGOLIA
Attention: Hon. Luvsangiin Erdenechuluun,

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

---------- x

THE CITY OF NEW YORK,

Plaintiff,

-against-

THE BAYARYN JARGALSAIKHAN, AS PRINCIPAL RESIDENT REPRESENTATIVE TO THE UNITED NATIONS OF THE MONGOLIAN PEOPLE'S REPUBLIC, and "JANE DOE #1" through "JANE DOE #20", the names of the last 20 defendants being unknown to plaintiff, the persons or parties intended to be, persons or corporations, if any, having or claiming an interest in or lien upon the property described in the complaint,

Defendants.

---------- x

VERIFIED COMPLAINT FOR FORECLOSURE OF TAX LIENS AND OTHER RELIEF

Index No.

Plaintiff, the City of New York (the "City"), by its attorney, MICHAEL A. CARDOZO, Corporation Counsel of the City of New York, as and for its Verified Complaint, alleges as follows:

NATURE OF THE ACTION

1. This action is brought pursuant to Title 11 of the Administrative Code of the City of New York ("Admin. Code") to enforce payment of tax liens held by the City. The City seeks a Judgment of Foreclosure establishing the validity of the tax liens held by the City resulting from

real property taxes and other charges and interest thereupon which are due and owing to the City. Section 11-354 provides that the City may maintain an action in the Supreme Court for the enforcement and/or foreclosure of tax liens which remain due and unpaid for at least one year, and for other remedies and procedures provided by law.

2. The following property is the subject of this action: 6 East 77th Street, New York, New York 10021, a parcel also known on the Tax Map of the City of New York as Manhattan Block 1391 Lot 68 (the "Subject Parcel").

3. The Subject Parcel is improved with an 5 story building containing a gross building area of 10,524 square feet.

4. As of February 1, 2003, the outstanding balance of tax liens for real property taxes, interest and other charges was $2,068,995.00.

5. The Defendant Bayaryn Jargalsaikhan, as Principal Resident Representative to the United Nations of the Mongolian People's Republic is subject to suit pursuant to Sections § 1605(a)(2) and §1605(a)(4) of the Foreign Sovereign Immunities Act. 28 U.S.C. §§ 1330, 1602-1611.

VENUE

6. Venue is proper in this Court, pursuant to Section 11-335 of the Admin. Code and Section 507 of the New York Civil Practice Law and Rules because the judgment demanded in this action would affect title to, or the possession, use, or enjoyment of, real property situated in the County of New York.

THE PARTIES

7. Plaintiff is a municipal corporation duly organized and existing under the laws of the State of New York, having its principal place of business at City Hall, New York, New York 10007.

8. The Defendant Bayaryn Jargalsaikhan, as Principal Resident Representative to the United Nations of the Mongolian People's Republic, whose address of record is 330 East 46th Street, New York, New York, New York 10017, is named as a party-defendant because it is the

* * *

Charge Type	Date Due	Principal Amount Due	Interest Amount Due
Real Estate Tax	04/01/81	$1611.00	$40696.75
Real Estate Tax	07/01/81	2013.75	49990.57
Real Estate Tax	10/01/81	2013.75	48729.70
Real Estate Tax	01/01/82	2013.75	47468.76
Real Estate Tax	04/01/82	2013.75	46235.21
Real Estate Tax	06/30/82	0.00	1976.71
Real Estate Tax	07/01/82	1733.44	38725.79
Real Estate Tax	10/01/82	1733.44	37746.75
Real Estate Tax	01/01/83	3466.88	73535.65
Real Estate Tax	07/01/83	3746.10	75295.73
Real Estate Tax	01/01/84	3746 10	72260.23
Real Estate Tax	07/01/84	3931.20	72679.78
Real Estate Tax	01/01/85	3931.20	69108.19
Real Estate Tax	07/01/85	3931.20	65594.77
Real Estate Tax	01/01/86	3931.20	62505.77

Real Estate Tax	07/01/86	4272.39	64628.31
Real Estate Tax	01/01/87	4272.39	61271.19
Real Estate Tax	06/30/87	779.21	10575.79
Real Estate Tax	07/01/87	4336.85	58843.47
Real Estate Tax	01/01/88	4336.85	55648.69
Real Estate Tax	07/01/88	4657.00	52818.50
Add. Real Tax	07/01/89	4899.76	51902.85
Real Estate Tax	01/01/90	4899.76	47330.95
Real Estate Tax	02/28/90	106.43	996.78
Real Estate Tax	07/01/90	5101.00	44592.76
Real Estate Tax	03/01/91	82.92	628.89
Real Estate Tax	01/01/91	5101.00	40055.09
Real Estate Tax	07/01/91	5982.94	42219.44
Real Estate Tax	01/01/92	5982.94	38039.14
Real Estate Tax	01/01/88	4336.85	55648.69
Real Estate Tax	07/01/88	4657.00	56363.42
Real Estate Tax	01/01/89	4657.00	52818.50
Real Estate Tax	07/01/89	4899.76	51902.85
Real Estate Tax	01/01/90	4899.76	47330.95
Real Estate Tax	02/28/90	106.43	996.78
Real Estate Tax	07/01/90	5101.00	44592.76
Real Estate Tax	03/01/91	82.92	628.89
Real Estate Tax	01/01/91	5101.00	40055.09
Real Estate Tax	07/01/91	5982.94	42219.44
Real Estate Tax	01/01/92	5982.94	38039.14

Real Estate Tax	07/01/92	6073.26	34778.24
Real Estate Tax	01/01/93	6073.26	31235.43
Real Estate Tax	07/01/93	6444.62	29765.49
Real Estate Tax	01/01/94	6444.62	26625.20
Real Estate Tax	07/01/94	6797.98	25107.02
Real Estate Tax	01/01/95	6506.86	21383.38
Real Estate Tax	07/01/95	6671.70	19483.72
Real Estate Tax	01/01/96	6671.70	17215.42
Additional Real Estate Tax	07/01/96	7072.00	16075
Real Estate Tax	01/01/97	7151.12	14225.23
Real Estate Tax	07/01/97	7218.88	12517.78
Real Estate Tax	01/01/98	7304.54	10934.36
Real Estate Tax	07/01/98	7697.30	9881.48
Real Estate Tax	01/01/99	7856.22	8529.51
Real Estate Tax	07/01/99	8182.22	7426.52
Real Estate Tax	01/01/00	8489.76	6301.12
Real Estate Tax	07/01/00	2084.04	1235.17
Real Estate Tax	01/01/01	2116.88	962.24
Real Estate Tax	07/01/01	2226.46	735.57
Real Estate Tax	01/01/02	2366.50	508.80
Real Estate Tax	07/01/02	2331.14	259.40
Real Estate Tax	01/01/03	2909.03	43.35

Total Principal Charges: $ 230,042.27

Total Interest Charges: $1,838,952.73

Grand Total Charges $2,068,995.00

12. As of February 1, 2003, the unpaid principal balance for taxes and other charges for the Subject Parcel was $230,042.27. The statutory interest which has accrued on the unpaid taxes and other charges as of February 1, 2003 was $1,838,952.73. The total amount outstanding of taxes, other charges, and interest as of February 1, 2003 was $2,068,995.00

JUDGMENT DECLARING VALIDITY OF TAX LIENS

13. The City requests that the Court impose a Judgment on the Defendants declaring the validity of the tax liens in the amount outstanding on the Subject Parcel pursuant to Admin. Code § 11-354 and § 11-338.

JUDGMENT OF FORECLOSURE

14. The City requests that in the event that this action proceeds to a Judgment of Foreclosure on the Subject Parcel pursuant to Admin. Code § 11-354 and § 11-338, that the Court issue a Judgment directing the Defendant Bayaryn Jargalsaikhan, as Principal Resident Representative to the United Nations of the Mongolian People's Republic, to pay the Plaintiff the amount of real property taxes, other charges and interest cited above, subject to the following:

a. Any state of facts that an inspection of the exempt and/or non-exempt use of the Subject Parcel would disclose;

b. Any state of facts that an accurate survey of the Subject Parcel would show;

c. Any taxes, assessments, emergency repair liens, water and sewer rents and other charges that hereinafter become liens against the property; and

d. Prior liens of record not set forth in this Verified Complaint, if any.

ELECTION OF REMEDIES AND NO WAIVER OF OTHER REMEDIES

15. No other action or proceeding has been commenced or is now pending at law or otherwise to foreclose the tax lien or to recover the debt owed by the Defendant Bayaryn Jargalsaikhan, as Principal Resident Representative to the United Nations of the People's Republic of Mongolia.

16. In the event that the Plaintiff possesses any other liens against the property, either by way of judgment, or otherwise, Plaintiff requests that such other lien(s) shall not be merged in Plaintiff's cause of action set forth in this complaint, but that Plaintiff shall be permitted to enforce said other lien(s) and/or seek determination of priority thereof in any other independent action(s), proceeding(s), including without limitation, any surplus money proceedings.

17. By this action, the City does not waive and reserves its right to commence any additional and supplementary proceedings, procedures or remedies provided by law.

WHEREFORE, Plaintiff demands judgment ordering:

1. That a Judgment in favor of the City establishing the validity of the tax lien in the amount outstanding be entered against the Defendants;

2. That a Judgment of Foreclosure be entered in favor of the City and against the Defendants directing that the Defendants pay the amount of taxes, interest and other charges due as set forth above, together with other amounts which would accrue up to the time of such payment, as well as the expenses of the foreclosure, along with costs, including attorneys fees, expense allowances, and disbursements of the action;

3. That the Defendants and each of them and all persons claiming under them or any of them subsequent to the filing of the notice of pendency of this action in the Office of the Clerk of the County of New York, in which County the property is situated, be barred and forever foreclosed of and from all estate, right, interest, claim, lien, in, to, or on the Subject Parcel and each and every part of it; and

4. That the City have such other and further relief as the Court may deem just and proper.

Dated: New York, New York
April 2, 2003

MICHAEL A. CORDOZO
Corporation Counsel of
the City of New York
Attorney for the Plaintiff
100 Church Street
Room 5-216
New York, N.Y. 10007
(212) 788-0445
/s/ Robert J. Paparella
ROBERT J. PAPARELLA
Assistant Corporation Counsel

VERIFICATION

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

Sam Miller, being duly sworn, deposes and says that deponent is a Assistant Commissioner with the Finance Department of the City of New York, the Plaintiff herein, that deponent has read the forgoing Verified Complaint and knows the contents hereof, and states the same is true to deponent's own knowledge, except as to the matters stated to be alleged upon information and belief, and as to those matters, deponent believes them to be true.

The grounds of deponent's belief as to all matters in the Verified Complaint not stated upon deponent's knowledge are the official books and records of the City and conversations with employees of the City.

/s/ Sam Miller
Sam Miller
Assistant Commissioner
of Finance

Sworn to before me this 2nd
day of April, 2003

/s/ Peter Byrne
NOTARY PUBLIC

PETER BYRNE
Notary Public, State of New York
No. 01BY4608467
Qualified in Queens County
Commission Expires Oct. 31, 2001

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----------X

THE CITY OF NEW YORK,

Plaintiff,

-against-

THE BAYARYN JARGALSAIKHAN, AS PRINCIPAL RESIDENT REPRESENTATIVE TO THE UNITED NATIONS OF THE MONGOLIAN PEOPLE'S REPUBLIC, THE MONGOLIAN PEOPLE'S REPUBLIC, and "JANE DOE #1" through "JANE DOE #20", the names of the last 20 defendants being unknown to the plaintiff, the persons or parties intended to be, persons or corporations, if any, having or claiming an interest in or lien upon the property described in the complaint.

Defendants.

----------X

NOTICE OF SUIT PURSUANT TO 28 U.S.C. § 1608(a)

Index No. 03401200

NOTICE OF SUIT

1. *Title or Proceeding; Full Name of Court; Case or Docket Number:* The City of New York, Plaintiff, Against The Bayaryn Jargalsaikhan, as Principal Resident Representative to the United Nations of the Mongolian People's Republic, The Mongolian People's Republic, and "Jane Doe #1" through "Jane Doe #20", the Names of the Last 20 Defendants Being Unknown to Plaintiff, the Persons or

Parties Intended to Be Persons, or Corporations, if any, Having or Claiming an Interest in or Lien Upon the Property Described in the Complaint, Defendants. Supreme Court of the State of New York, County of New York. Index Number: 03401200.

2. *Name of Foreign State (or Political Subdivision) Concerned:* The Principal Resident Representative to the United Nations of the Mongolian People's Republic (who may otherwise be known as The Permanent Representative of the Permanent Mission of Mongolia to the United Nations) and The Mongolian People's Republic (which may otherwise be known as Mongolia).

3. *Identity of the Other Parties:* The City of New York, a municipal corporation duly organized and existing under the laws of the State of New York, having its principal place of business at City Hall, New York, New York 10007 (Plaintiff) and Jane Doe #1 through Jane Doe #20, persons or corporations and other lienors, if any, who may have or claim to have an interest in or lien against the property that is the subject of this suit (Defendants).

JUDICIAL DOCUMENTS

4. *Nature of the Documents Served:* Summons and Verified Complaint.

5. *Nature and Purpose of the Proceeding; Why the Foreign State Has Been Named; Relief Requested:* This legal proceeding relates to the parcel of real property located in the Borough of Manhattan, County of New York, City and State of New York at 6 East 77th Street, New York, New York 10021 (a parcel also known on the Tax Map of the City of New York as Manhattan Block 1391 Lot

68). The Principal Resident Representative to the United Nations of the Mongolian People's Republic has been named as a defendant in this legal proceeding because such person is the owner of record of the property. The Mongolian People's Republic has been named as a defendant in this legal proceeding because it is designated in the City's tax records as the recipient of tax bills and other communications regarding the property. One or both of these defendants, or the successors-in-interest thereof, is the owner of the property and, as such, is responsible by law for the payment of real property taxes and other real

* * *

8. Questions relating to state immunities and to the jurisdiction of Courts over foreign states are governed by the Foreign Sovereign Immunities Act of 1976, which appears in sections 1330, 1391(f), 1441(d), and 1602 through 1611 of Title 28 of the United States Code (Pub. L. No. 94-583; 90 Stat. 2891). As required by 22 C.F.R. § 93.2(e), attached is a copy of the Foreign Sovereign Immunities Act of 1976.

Dated: New York, New York
April 2, 2003

MICHAEL A. CARDOZO
Corporation Counsel of
the City of New York
Attorney for the Plaintiff
100 Church Street
Room 5-216
New York, N.Y. 10007
(212) 788-0445

By: /s/ Robert J. Paparella
ROBERT J. PAPARELLA
Assistant Corporation Counsel

To: The Principal Resident Representative
to the United Nations of the People's
Republic of Mongolia
6 East 77th Street
New York, New York 10021

The Principal Resident Representative
to the United Nations of the People's
Republic of Mongolia
330 East 46th Street
New York, New York

Ministry of Foreign Affairs
Government of Mongolia
Peace Ave. 7A, Ulaanbaatar
210648 MONGOLIA
Attention: Hon. Luvsangiin Erdenechuluun,

Index No.

SUPREME COURT OF THE STATE OF NEW YORK –
COUNTY OF NEW YORK

THE CITY OF NEW YORK,

Plaintiff,

-against-

THE BAYARYN JARGALSAIKHAN, AS PRINCIPAL RESIDENT REPRESENTATIVE TO THE UNITED NATIONS OF THE MONGOLIAN PEOPLE'S REPUBLIC, THE MONGOLIAN PEOPLE'S REPUBLIC AND "JANE DOE #1" through "JANE DOE #20", the names of the last 20 defendants being unknown to plaintiff, the persons or parties intended to be, persons or corporations, if any, having or claiming an interest in or lien upon the property described in the complaint,

Defendants.

NOTICE OF SUIT PURSUANT TO 28 U.S.C. § 1608(a)

MICHAEL A. CARDOZO
Corporation Counsel of the City of New York
Attorney for Defendants
100 Church Street
New York, N.Y. 10007

Of Counsel: Name
Tel: (212) 788-0445
NYCLIS No.

Telephone (212) 725-1808
Fax (212) 953-0988
Corps Diplomatique Associates
Interpreting – Translating
420 Lexington Avenue
Suite 2546
New York, NY 10170

CERTIFICATE OF ACCURACY

State of New York)
)ss:
County of New York)

(Filed Apr. 9, 2003)

I, Enebish, Baasangombo being duly sworn, depose and say that I am a professional translator, associated with Corps Diplomatique Associates, and that I am thoroughly familiar with the Mongolian and English languages and that the attached translation from English into Mongolian

of the "Summons and Verified Complaint" is a true and accurate rendition of the original document in English, to the best of my knowledge and belief.

/s/ Baasangombo Enebish
Translator:
Baasangombo ENEBISH
26 March 2003

Sworn before me on this
27th day of March, 2003.

/s/ Carol E. Post
Notary Public

CAROL E. POST
Notary Public, State of New York
No. 01PO6049301
Qualified in Kings County
Commission Expires Oct. 10, 20026

[LOGO]

THE CITY OF NEW YORK
LAW DEPARTMENT
100 CHURCH STREET
NEW YORK, N.Y. 10007-2601

MICHAEL A. CARDOZO
Corporation Counsel

(212) 788-0445

April 8, 2003

(Filed Apr. 09, 2003)

Clerk
Supreme Court
New York County

Re: The City of New York v. Bayaryan Jargalsaikhan, As Principal Resident Representative To the United Nations of the Mongolian People's Republic, New York Co. Index No. Law Department NYCLIS No. 03RM000004

Dear Sir or Madam:

Please be advised that, pursuant to CPLR 8017(a), 8018(d)(1), and 8019(d), and pursuant to Section 7-102 of the New York City Administrative Code, the New York City Law Department is exempt from filing and other fees.

Yours truly,

/s/ Robert J. Paparella
Robert J. Paparella
Assistant Corporation Counsel

COUNTY CLERK, NEW YORK COUNTY

Application for INDEX NUMBER pursuant to Section 8018, C.P.L.R.

FEE $185.00

Space below to be TYPED or PRINTED by applicant

INDEX NUMBER
N F
Do not write in this space

TITLE OF ACTION OR PROCEEDING

City of New York
vs.
Bayaryn Jargalsaikhan, as Principal Resident Representative to the United Nations of the Mongolian People's Republic and "Jane Doe #1" through "Jane Doe #20"

CHECK ONE

☒ COMMERCIAL ACTION	☐ NOT COMMERCIAL ACTION
☐ CONSUMER CREDIT TRANSACTION	☐ NOT CONSUMER CREDIT TRANSACTION
☐ THIRD PARTY ACTION	☐ NOT THIRD PARTY ACTION

IF THIRD PARTY ACTION MAIN INDEX NO. _____

Name and address of Attorney for Plaintiff or Petitioner. Telephone No.

Robert S. Paparella
100 Church St., NY NY

Name and address of Attorney for Defendant or Respondent. Telephone No.

A. Nature and object of action or _____
Nature of special proceeding _____

B. Application for Index Number filed by:
Plaintiff ☐ **Defendant** ☐

C. Was a previous Third Party Action filed
Yes ☐ **No** ☐
Date filed _____

[Affidavit Of Service Omitted In Printing]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

THE CITY OF NEW YORK,

Plaintiff,

-against-

THE BAYARYN JARGALSAIKHAN, AS PRINCIPAL RESIDENT REPRESENTATIVE TO THE UNITED NATIONS OF THE MONGOLIAN PEOPLE'S REPUBLIC, and "JANE DOE #1" through "JANE DOE #20", the names of the last 20 defendants being unknown to plaintiff, the persons or parties intended to be, persons or corporations, if any, having or claiming an interest in or lien upon the property described in the complaint,

Defendants.

- x

AMENDED COMPLAINT FOR FORECLOSURE OF TAX LIENS AND OTHER RELIEF

Index No.
03 CV 6086 RCC

Plaintiff, the City of New York (the "City"), by its attorney, MICHAEL A. CARDOZO, Corporation Counsel of the City of New York, as and for its Verified Complaint, alleges as follows:

NATURE OF THE ACTION

1. This action is brought pursuant to Title 11 of the Administrative Code of the City of New York ("Admin. Code") to enforce payment of tax liens held by the City.

The City seeks a Judgment of Foreclosure establishing the validity of the tax liens held by the City resulting from real property taxes and other charges and interest thereupon which are due and owing to the City. Section 11-354 provides that the City may maintain an action in the Supreme Court for the enforcement and/or foreclosure of tax liens which remain due and unpaid for at least one year, and for other remedies and procedures provided by law.

2. The following property is the subject of this action: 235 East 43rd Street, New York, New York 10017, a parcel also known on the Tax Map of the City of New York as Manhattan Block 1317 Lot 20 ("Subject Parcel").

3. The Subject Parcel is improved with a 26 story residential apartment building containing a gross building area of 87,151 square feet.

4. As of January 31, 2003, the total outstanding amount for real estate taxes, other charges and interest was $16,376,702.09.

5. As more fully alleged in paragraphs 12 through 19 herein, the Defendant Permanent Mission of India to the United Nations is subject to suit pursuant to Sections §1605(a)(2) and §1605(a)(4) of the Foreign Sovereign Immunities Act. 28 U.S.C. §§ 1330, 1602-1611.

VENUE

6. Venue when this action was commended was pleaded pursuant to Section 11-335 of the Admin. Code and Section 507 of the New York Civil Practice Law and Rules because the judgment demanded in this action would affect title to, or the possession, use, or enjoyment

of, real property situated in the County of New York. Venue is now proper in this Court based on removal jurisdiction pursuant to 28 U.S.C. § 1441.

THE PARTIES

7. Plaintiff is a municipal corporation duly organized and existing under the laws of the State of New York, having its principal place of business at City Hall, New York, New York 10007.

8. The Defendant Permanent Mission of India to the United Nations, whose address of record is 750 Third Avenue, New York, New York, 10017, is named as a party-defendant because it is the owner of the Subject Parcel. the Permanent Mission of India to the United Nations acquired title to the Subject Parcel from Second Avenue Commercial, Inc., by deed dated September 8, 1980. The deed was recorded on September 10, 1980 in reel 536, page 1262.

9. Great America Leasing Corporation, a foreign corporation having an address at P.O. Box 609, Cedar Rapids, Iowa 52406, is named as a party-defendant to bar it from any right, title or interest that it may have in the Subject Parcel as the holder of an interest in the Subject Parcel pursuant to UCC-1 Financing Statement No 99PN62032 filed in the city Register's Office of New York County on November 16, 1999.

10. Defendants Jane Doe #1 through Jane Doe #20 are named as party-defendants to represent persons or corporations and other lienors, if any, who may have or claim to have an interest in or lien against the Subject Parcel. Plaintiff will submit the true names and interest of

Jane Doe #1 – Jane Doe #20 as and when Plaintiff learns of their true names and interest.

DEFENDANTS' INTERESTS ARE SUBORDINATE

11. Each of the defendants named in this action claims to have or may have some right, title, interest or lien in or to the Subject Parcel or some part thereof, which right, title, interest or lien, if any, is subject and subordinate to the tax liens.

DELINQUENT TAXES AND ASSESSMENTS

12. Based upon information obtained via inspection of the Subject Parcel by an assessor from the Exemptions Unit at the New York City Department of Finance, the City has determined that the first six floors of the twenty-six floor building were used as offices of India's Mission to the United Nations. The upper floors (seven through twenty six) were used as housing for diplomatic staff.

13. Officials of the Indian Mission have informed the City that the residential portion of the building did not house the residence of the Head of Mission or the Minister Plenipotentiary and that the building has been used for staff housing since it has been occupied in 1991.

14. Under applicable law, only that portion of foreign government-owned property that is used exclusively for the official residence of the resident representative with rank of ambassador or minister plenipotentiary is exempt from real property taxation.

15. Moreover, to the extent that such residential portion of the building is leased to employees, provided as

compensation to employees, offered in consideration of employment, or conferred as a benefit upon employees, use of the Subject Parcel is commercial in nature.

16. Based on inspection and the information provided by the employees of the Indian Mission, that portion of the Subject Parcel used as housing for diplomatic staff were classified as non-exempt for purposes of imposing real property tax assessments.

17. Additionally, under applicable law any other charges assessed constituting service charges are non-exempt.

18. Taxes, other charges and interest due and owing to the City and the dates on which such taxes and other charges came due are set forth on the following pages:

Manhattan Block 1317 Lot 20

235 East 43rd St., New York, N.Y. 10017

Owner: Permanent Mission of India to the United Nations

Charge Type	Date Due	Principal Amount Due	Interest Amount Due
Sidewalk Repair	08/28/85	$1160.78	$19080.89
Sidewalk Repair	10/28/88	1437.50	16690.26
Additional Real Estate Tax	03/01/91	1017.00	1968.09
Real Estate Tax	07/01/91	147497.95	1040839.66
Real Estate Tax	01/01/92	147497.95	937782.17
Real Estate Tax	07/01/92	170633.10	977122.42
Real Estate Tax	01/01/93	170633.10	877584.37
Elevator Charge	03/28/93	260.00	879.28

Real Estate Tax	07/01/93	230448.04	1064360.33
Real Estate Tax	01/01/94	230448.04	952069.26
Real Estate Tax	07/01/94	221285.31	817274.31
Real Estate Tax	01/01/95	238316.91	783176.85
Elevator Charge	06/28/95	65.00	138.19
Elevator Charge	02/28/1995	195.00	445.37
Real Estate Tax	07/01/95	228053.45	65996.67
Real Estate Tax	01/01/96	228053.45	588461.00
Real Estate Tax	07/01/96	230434.85	523798.33
Real Estate Tax	01/01/97	219094.85	435830.27
Elevator Charge	08/28/97	260.00	327.00
Real Estate Tax	07/01/97	204622.71	354822.65
Real Estate Tax	01/01/98	198603.51	297294.96
Real Estate Tax	07/01/98	200578.90	257494.91
Elevator Charge	12/28/98	260.00	220.55
Real Estate Tax	01/01/99	205503.70	223115.74
Real Estate Tax	07/01/99	206589.21	187508.78
Real Estate Tax	01/01/00	189694.41	140791.63
Elevator Charge	02/28/00	260.00	143.22
Real Estate Tax	07/01/00	198663.22	117743.94
Real Estate Tax	01/01/01	189872.64	86308.00
Real Estate Tax	07/01/01	194777.82	64350.40
Real Estate Tax	01/01/02	192544.50	41397.57
Elevator Charge	03/28/02	260.00	35.20

Real Estate Tax	07/01/02	194421.60	21634.28
Real Estate Tax	01/01/03	233097.70	3473.34

Total Principal Charges: $ 4,876,542.20

Total Interest Charges: $ 11,500,159.89

Grand Total: $ 16,376,702.09

19. As of January 31, 2003, the unpaid principal balance for real estate taxes and other charges for the Subject Parcel was $4,876,542.20. The statutory interest which has accrued on the unpaid taxes and other charges as of January 31, 2003 was $11,500,159.89. The total outstanding amount of taxes, other charges, and interest as of January 31, 2003 was $16,376,702.09

JUDGMENT DECLARING VALIDITY OF TAX LIENS

20. The City requests that the court impose a Judgment on the Defendants declaring the validity of the tax liens in the amount outstanding on the Subject Parcel pursuant to Admin. Code § 11-354 and § 11-338.

JUDGMENT OF FORECLOSURE

21. The City requests that in the event that this action proceeds to a Judgment of Foreclosure on the Subject Parcel pursuant to Admin. Code § 11-354 and § 11-338, that the Court issue a Judgment directing the Defendant Permanent Mission of India to the United Nations to pay the Plaintiff the amount of real property taxes, other charges and interest cited above, subject to the following:

a. Any state of facts that an inspection of the exempt and/or non-exempt use of the Subject Parcel would disclose;

b. Any state of facts that an accurate survey of the Subject Parcel would show;

c. Any taxes, assessments, emergency repair liens, water and sewer rents and other charges that hereinafter become liens against the Subject Parcel; and

d. Prior liens of record not set forth in this Verified Complaint, if any.

ELECTION OF REMEDIES AND NO WAIVER OF OTHER REMEDIES

22. No other action or proceeding has been commenced or is now pending at law or otherwise to foreclose the tax lien or to recover the debt owed by the Defendant Permanent Mission of India to the United Nations.

23. In the event that the Plaintiff possesses any other liens against the Subject Parcel, either by way of judgment, or otherwise, Plaintiff requests that such other lien(s) shall not be merged in Plaintiff's cause of action set forth in this complaint, but that Plaintiff shall be permitted to enforce said other lien(s) and/or seek determination of priority thereof in any other independent action(s), proceeding(s), including without limitation, any surplus money proceedings.

24. By this action, the City does not waive and reserves its right to commence any additional and supplementary proceedings, procedures or remedies provided by law.

WHEREFORE, Plaintiff demands judgment ordering:

1. That a Judgment in favor of the City establishing the validity of the tax lien in the amount outstanding be entered against the Defendants pursuant to Admin. Code § 11-338;

2. That a Judgment of Foreclosure be entered in favor of the City and against the Defendants directing that the Defendants pay the amount of taxes, interest and other charges due as set forth above, together with other amounts which would accrue up to the time of such payment and the expenses of the foreclosure, along with costs, including attorneys fees, expense allowances, and disbursements of the action;

3. That the Defendants and each of them and all persons claiming under them or any of them subsequent to the filing of the notice of pendency of this action in the Office of the Clerk of the County of New York, in which County the Subject Parcel is situated, be barred and forever foreclosed of and from all estate, right, interest, claim, or lien, in, to, or on the Subject Parcel and each and every part of it; and

4. That the City have such other and further relief as the Court may deem just and proper.

Dated: New York, New York
December 23, 2003

MICHAEL A. CORDOZO
Corporation Counsel of
the City of New York
Attorney for the Plaintiff
100 Church Street
Room 5-216
New York, N.Y. 10007
(212) 788-0445

/s/ Robert J. Paparella
By: ROBERT J. PAPARELLA
Assistant Corporation Counsel

TO: Kaye Scholer LLP
ATTN: John J.P. Howley, Esq.
Robert Kandel, Esq.
Attorneys for Defendant
4265 Park Ave.
New York, NY 10022

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

THE CITY OF NEW YORK,

Plaintiff,

-against-

THE BAYARYN JARGALSAIKHAN, AS PRINCIPAL RESIDENT REPRESENTATIVE TO THE UNITED NATIONS OF THE MONGOLIAN PEOPLE'S REPUBLIC, and "JANE DOE #1" through "JANE DOE #20", the names of the last 20 defendants being unknown to plaintiff, the persons or parties intended to be, persons or corporations, if any, having or claiming an interest in or lien upon the property described in the complaint,

Defendants.

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AMENDED COMPLAINT FOR FORECLOSURE OF TAX LIENS AND OTHER RELIEF

Index No.
03 CV 6086 RCC

Plaintiff, the City of New York (the "City"), by its attorney, MICHAEL A. CARDOZO, Corporation Counsel of the City of New York, as and for its Verified Complaint, alleges as follows:

NATURE OF THE ACTION

1. This action is brought pursuant to Title 11 of the Administrative Code of the City of New York ("Admin. Code") to enforce payment of tax liens held by the City. The City seeks a Judgment of Foreclosure establishing the validity of the tax liens held by the City resulting from

real property taxes and other charges and interest thereupon which are due and owing to the City. Section 11-354 provides that the City may maintain an action in the Supreme Court for the enforcement and/or foreclosure of tax liens which remain due and unpaid for at least one year, and for other remedies and procedures provided by law.

2. The following property is the subject of this action: 6 East 77th Street, New York, New York 10021, a parcel also known on the Tax Map of the City of New York as Manhattan Block 1391 Lot 68 (the "Subject Parcel" or the "Subject").

3. The Subject Parcel is improved with an 6 story building containing a gross building area of 10,524 square feet.

4. As of January 31, 2003, the outstanding balance of tax liens for real property, taxes, interest and other charges was $2,068,995.00.

5. As more fully alleged in paragraphs 11 through 17, the Defendant Bayaryn Jargalsaikhan, as Principal Resident Representative to the United Nations of the Mongolian People's Republic is subject to suit pursuant to Sections §1605(a)(2) and §1605(a)(4) of the Foreign Sovereign Immunities Act. 28 U.S.C. §§ 1330, 1602-1611.

VENUE

6. Venue when this action was commenced was pleaded pursuant to Section 11-335 of the Admin. Code and Section 507 of the New York Civil Practice Law and Rules because the judgment demanded in this action would affect

title to, or the possession, use, or enjoyment of, real property situated in the County of New York. Venue is now proper also in this Court based on removal jurisdiction pursuant to 28 U.S.C. § 1441.

THE PARTIES

7. Plaintiff is a municipal corporation duly organized and existing under the laws of the State of New York, having its principal place of business at City Hall, New York, New York 10007.

8. The Defendant Bayaryn Jargalsaikhan, as Principal Resident Representative to the United Nations of the Mongolian People's Republic, whose address of record is 330 East 46th Street, New York, New York, New York, 10017, is named as a party-defendant because it is the owner of the Subject Parcel. The Defendant acquired title to the Subject Parcel from the Ecko Products Company by deed dated April 11, 1962. The deed was recorded on April 19, 1962 in Liber 5184CP37.

9. Defendants Jane Doe #1 through Jane Doe #20 are named as party-defendants to represent persons or corporations and other lienors, if any, who may have or claim to have an interest in or lien against the Subject Parcel. Plaintiff will submit the true names and interest of Jane Doe #1 through Jane Doe #20 as and when Plaintiff learns of their true names and interest.

DEFENDANTS' INTERESTS ARE SUBORDINATE

10. Each of the defendants named in this action claims to have or may have some right, title, interest or lien in or to the Subject Parcel or some part thereof, which

right, title, interest or lien, if any, is subject and subordinate to the tax liens.

DELINQUENT TAXES AND ASSESSMENTS

11. Based upon information obtained via inspection of the Subject Parcel by an assessor from the Exemptions Unit at the New York City Department of Finance and acknowledgments of employees of the Mongolian Mission, the City determined that the first two floors of the six story building were used as offices of Mongolia's Mission to the United Nations. The third floor contained the residence of the Ambassador to the United Nations. The fourth and fifth floors were used as housing for staff.

12. Under applicable law, only that portion of foreign-owned government property that is used exclusively for the official residence of the resident representative with rank of ambassador or minister plenipotentiary is exempt from real property taxation.

13. To the extent that such residential portion of the building is leased to employees, provided as compensation to employees, offered in consideration of employment, or conferred as a benefit upon employees, use of the property is commercial in nature.

14. Based on inspections, the City classified that portion of the Subject Parcel used as housing for diplomatic staff non-exempt for purposes of imposing real property tax assessments.

15. Additionally, under applicable law any other charges assessed constituting service charges are non-exempt.

16. Taxes, other charges and interest due and owing to the City and the dates on which such taxes and other charges came due are set forth below:

Manhattan Block 1391 Lot 68

6 East 77th Street, Street, New York, N.Y. 10021

Owner: Bayaryn Jargalsaikhan, as Principal Resident Representative to the United Nations of the People's Republic of Mongolia

Charge Type	Date Due	Principal Amount Due	Interest Amount Due
Real Estate Tax	07/01/80	$880.98	$32699.57
Real Estate Tax	10/01/80	5175.00	41164.50
Real Estate Tax	01/01/81	1611.00	41393.33
Real Estate Tax	04/01/81	1611.00	40696.75
Real Estate Tax	07/01/81	2013.75	49990.57
Real Estate Tax	10/01/81	2013.75	48729.70
Real Estate Tax	01/01/82	2013.75	47468.76
Real Estate Tax	04/01/82	2013.75	46235.21
Real Estate Tax	06/30/82	0.00	1976.71
Real Estate Tax	07/01/82	1733.44	38725.79
Real Estate Tax	10/01/82	1733.44	37746.75
Real Estate Tax	01/01/83	3466.88	73535.65
Real Estate Tax	07/01/83	3746.10	75295.73
Real Estate Tax	01/01/84	3746.10	72260.23
Real Estate Tax	07/01/84	3931.20	72679.78
Real Estate Tax	01/01/85	3931.20	69108.19

Real Estate Tax	07/01/85	3931.20	65594.77
Real Estate Tax	01/01/86	3931.20	62505.77
Real Estate Tax	07/01/86	4272.39	64628.31
Real Estate Tax	01/01/87	4272.39	61271.19
Real Estate Tax	06/30/87	779.21	10575.79
Real Estate Tax	07/01/87	4336.85	58843.47
Real Estate Tax	01/01/88	4336.85	55648.69
Real Estate Tax	07/01/88	4657.00	52818.50
Add. Real Tax	07/01/89	4899.76	51902.85
Real Estate Tax	01/01/90	4899.76	47330.95
Real Estate Tax	02/28/90	106.43	996.78
Real Estate Tax	07/01/90	5101.00	44592.76
Real Estate Tax	03/01/91	82.92	628.89
Real Estate Tax	01/01/91	5101.00	40055.09
Real Estate Tax	07/01/91	5982.94	42219.44
Real Estate Tax	01/01/92	5982.94	38039.14
Real Estate Tax	01/01/88	4336.85	55648.69
Real Estate Tax	07/01/88	4657.00	56363.42
Real Estate Tax	01/01/89	4657.00	52818.50
Real Estate Tax	07/01/89	4899.76	51902.85
Real Estate Tax	01/01/90	4899.76	47330.95
Real Estate Tax	02/28/90	106.43	996.78
Real Estate Tax	07/01/90	5101.00	44592.76
Real Estate Tax	03/01/91	82.92	628.89

Real Estate Tax	01/01/91	5101.00	40055.09
Real Estate Tax	07/01/91	5982.94	42219.44
Real Estate Tax	01/01/92	5982.94	38039.14
Real Estate Tax	07/01/92	6073.26	34778.24
Real Estate Tax	01/01/93	6073.26	31235.43
Real Estate Tax	07/01/93	6444.62	29765.49
Real Estate Tax	01/01/94	6444.62	26625.20
Real Estate Tax	07/01/94	6797.98	25107.02
Real Estate Tax	01/01/95	6506.86	21383.38
Real Estate Tax	07/01/95	6671.70	19483.72
Real Estate Tax	01/01/96	6671.70	17215.42
Additional Real Estate Tax	07/01/96	7072.00	16075
Real Estate Tax	01/01/97	7151.12	14225.23
Real Estate Tax	07/01/97	7218.88	12517.78
Real Estate Tax	01/01/98	7304.54	10934.36
Real Estate Tax	07/01/98	7697.30	9881.48
Real Estate Tax	01/01/99	7856.22	8529.51
Real Estate Tax	07/01/99	8182.22	7426.52
Real Estate Tax	01/01/00	8489.76	6301.12
Real Estate Tax	07/01/00	2084.04	1235.17
Real Estate Tax	01/01/01	2116.88	962.24
Real Estate Tax	07/01/01	2226.46	735.57
Real Estate Tax	01/01/02	2366.50	508.80

Real Estate Tax	07/01/02	2331.14	259.40
Real Estate Tax	01/01/03	2909.03	43.35

Total Principal Charges: $ 230,042.27

Total Interest Charges: $1,838,952.73

Grand Total Charges $2,068,995.00

17. As of January 31, 2003, the unpaid principal balance for taxes and other charges for the Subject Parcel was $230,042.27. The statutory interest which has accrued on the unpaid taxes and other charges as of January 31, 2003 was $1,838,952.73. The total amount outstanding of taxes, other charges, and interest as of January 31, 2003 was $2,068,995.00.

JUDGMENT DECLARING VALIDITY OF TAX LIENS

18. The City requests that the court impose a Judgment on the Defendants declaring the validity of the tax liens in the amount outstanding on the Subject Parcel pursuant to Admin. Code § 11-354 and § 11-338.

JUDGMENT OF FORECLOSURE

19. The City requests that in the event that this action proceeds to a Judgment of Foreclosure on the Subject Parcel pursuant to Admin. Code § 11-354 and § 11-338, that the Court issue a Judgment directing the Defendant Bayaryn Jargalsaikhan, as Principal Resident Representative to the United Nations of the Mongolian Peoples Republic, to pay the Plaintiff the amount of real property taxes, other charges and interest cited above, subject to the following:

a. Any state of facts that an inspection of the exempt and/or non-exempt use of the Subject Parcel would disclose;

b. Any state of facts that an accurate survey of the Subject Parcel would show;

c. Any taxes, assessments, emergency repair liens, water and sewer rents and other charges that hereinafter become liens against the Subject Parcel; and

d. Prior liens of record not set forth in this Verified Complaint, if any.

ELECTION OF REMEDIES AND NO WAIVER OF OTHER REMEDIES

20. No other action or proceeding has been commenced or is now pending at law or otherwise to foreclose the tax lien or to recover the debt owed by the Defendant Bayaryn Jargalsaikhan, as Principal Resident Representative to the United Nations of the People's Republic of Mongolia.

21. In the event that the Plaintiff possesses any other liens against the Subject Parcel, either by way of judgment, or otherwise, Plaintiff requests that such other lien(s) shall not be merged in Plaintiff's cause of action set forth in this complaint, but that Plaintiff shall be permitted to enforce said other lien(s) and/or seek determination of priority thereof in any other independent action(s), proceeding(s), including without limitation, any surplus money proceedings.

22. By this action, the City does not waive and reserves its right to commence any additional and supplementary proceedings, procedures or remedies provided by law.

WHEREFORE, Plaintiff demands judgment ordering:

1. That a Judgment in favor of the City establishing the validity of the tax lien in the amount outstanding be entered against the Defendants;

2. That a Judgment of Foreclosure be entered in favor of the City and against the Defendants directing that the Defendants pay the amount of taxes, interest and other charges due as set forth above, together with other amounts which would accrue up to the time of such payment, as well as the expenses of the foreclosure, along with costs, including attorneys fees, expense allowances, and disbursements of the action;

3. That the Defendants and each of them and all persons claiming under them or any of them subsequent to the filing of the notice of pendency of this action in the Office of the Clerk of the County of New York, in which County the Subject Parcel is situated, be barred and forever foreclosed of and from all estate, right, interest, claim, or lien, in, to, or on the Subject Parcel and each and every part of it; and

4. That the City have such other and further relief as the Court may deem just and proper.

Dated: New York, New York
December 22, 2003

MICHAEL A. CORDOZO
Corporation Counsel of
the City of New York
Attorney for the Plaintiff
100 Church Street
Room 5-216
New York, N.Y. 10007
(212) 788-0445

/s/ Robert J. Paparella
By: ROBERT J. PAPARELLA
Assistant Corporation Counsel

To: Kaye Scholer LLP
ATTN: John J.P. Howley, Esq.
Robert Kandel, Esq.
Attorneys for Defendant
425 Park Ave.
New York, NY 10022

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---------- x

THE CITY OF NEW YORK,

Plaintiff,

-against-

THE PERMANENT MISSION OF INDIA TO THE UNITED NATIONS, et al.,

Defendants.

No. 03 CV 3256 RCC

AFFIRMATION OF ROBERT NEGRON, JR.

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ROBERT NEGRON, JR., under penalty of perjury, affirms and says:

1. I am an associate with the law firm of Kaye Scholer LLP, counsel for defendant The Permanent Mission of India to the United Nations in this action, and am personally familiar with the matters set forth herein.

2. I submit this affirmation in support of Defendants' Motion To Dismiss The Amended Complaint For Lack Of Subject Matter Jurisdiction.

3. Attached hereto as Exhibits A-C are copies of documents cited in Defendant's Memorandum Of Law In Support Of Its Motion To Dismiss The Amended Complaint For Lack Of Subject Matter Jurisdiction:

Document	**Ex.**
Plaintiffs Amended Complaint	A
Affidavit of Ruchira Kamboj	B

India's Second Supplemental Response
To Plaintiff's First Set Of Interrogatories
And First Request For The Production
Of Documents For The Purpose Of
Jurisdictional Discovery C

Dated: New York, New York
January 10, 2005

KAYE SCHOLER LLP

By: /s/ Robert Negron, Jr.
Robert A. Kandel (RK-6120)
John J.P. Howley (JH-9764)
Robert Negron, Jr. (RN-0276)
Attorneys for Defendant
425 Park Avenue
New York, New York 10022
(212) 836-8000

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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THE CITY OF NEW YORK,

Plaintiff,

-against-

THE PERMANENT MISSION OF INDIA TO THE UNITED NATIONS, et al.,

Defendants.

No. 03 CV 3256 RCC

AFFIDAVIT OF RUCHIRA KAMBOJ IN SUPPORT OF MOTION TO DISMISS

---------- x

RUCHIRA KAMBOJ, being duly sworn, deposes and says:

1. I am an employee of the Ministry of External Affairs of the Republic of India (the "Ministry") serving as Counsellor and Head of Chancery posted to the Permanent Mission of India to the United Nations (the "Mission"). I am personally familiar with the matters set forth herein.

2. My office is located within the Mission located at 235 East 43rd Street, New York, NY, as is my residence which I share with my family. I am in the United States on a "G-1" visa which is issued by the United States Department of State to diplomatic personnel assigned by their home state to the United Nations.

3. Construction of the Mission started in June 1989. The first six floors, basement and cellar of the Mission consist of diplomatic offices and accessory space. The remainder of the Mission, floors seven through twenty-six, consists of residential units, mechanical space and accessory

uses. Diplomats and staff began to occupy the Mission starting in January 1993.

4. Within the Mission a total of sixteen (16) diplomats and their families occupy the sixteen apartments within the building. The attached chart, Exhibit A, prepared at my direction, identifies each diplomat who has lived in these units with his or her family from January 1993 to date. The chart also notes the diplomat's title and his or her visa status. As noted, "G-1" visas are assigned to diplomats serving at the United Nations. "A-1" visas are assigned to diplomatic members of the Indian consulate.

5. Since January 1993 quarters for security personnel and a driver have been provided on the seventh floor of the Mission. These staff members also hold G-1 visas.

6. The Ministry, for its convenience and in accordance with law as noted below, provides housing within the Mission to certain senior level diplomats and security personnel posted to the United Nations and to the consular office for several key reasons, among others. First, given the time difference between the Mission and the Ministry in New Delhi, India, the diplomats at the Mission must be available, day and night, to address inquiries and communications from the Ministry as well as to transmit reports about developments at the United Nations to the Ministry. Second, the housing of personnel within the Mission fosters a greater concentration of attention by the diplomats and staff on matters pertinent to the Ministry. Third, the Ministry expects senior diplomats with residences within the Mission to use their residences to promote the overall interests of the Republic of India by entertaining and socializing with their diplomatic colleagues from other nations and with other persons who

might advance India's interests. Similarly, the location of these residences within the Mission facilitates participation by the diplomats and their families in social and cultural events hosted by the Mission to promote the government's interests. Fourth, having senior personnel living within the Mission facilitates providing security to all concerned. Fifth, the provision of housing at the Mission facilitates a more efficient transition between incoming and outgoing senior diplomats and their families by simplifying the logistics of relocating to the United States from India.

7. Housing within the Mission is provided to the diplomats quartered there without payment of any rent. In fact, as it is required to do by Indian law, the Ministry pays all costs of providing such housing. Attached as Exhibit B is the *Handbook of Rules and Regulations Relating to the Indian Foreign Service. Part-1, Indian Foreign Service (Pay, Leave, Compensatory Allowances and other Conditions of Service) Rules, 1961, (As Amended).* These regulations, which have the force of law, state "When serving outside India, an officer [of the Ministry] shall be entitled, subject to such conditions as may be prescribed by the Government, free of charge, to furnished residential accommodation in accordance with the subsequent provisions of this Annexure." Exhibit B at page 110. The provision of such housing to a diplomat (an officer of the Ministry) is not considered to be compensation to the diplomat.

Dated: New York, New York
January 15, 2004

/s/ Ruchira Kamboj
Ruchira Kamboj

Sworn to before me on this
15 day of January 2004

/s/ Robert A. Kandel
Notary Public

ROBERT A. KANDEL
Notary Public, State of New York
No. 02KA4521595
Qualified in Westchester County
Commission Expires June 30, 2006

———

PERMANENT MISSION OF INDIA TO THE UNITED NATIONS
235 EAST 43RD STREET
NEW YORK, NEW YORK 10017
ROSTER OF RESIDENTS – JANUARY 1993 TO DATE

Apartment No.	Name of the resident	Designation	Period	Visa Status
Apt. 26/25	Mr. A.S. Punia with family	Minister	Jan. 93-Mar. 96	A1
	Mr. N. Louvem with family	Counsellor	Mar. 96-June 99	A1
	Mr. R.V. Warjri with family	Minister	June 99-Aug. 02	A1
	Mr. Ashok Tomar with family	Minister	Aug. 02-till date	A1
Apt. 23/24	Mrs. Mitra Vashishth with family	Minister	Jan. 93-June 96	G1
	Mr. Rajat Saha with family	Minister	Aug. 96-Aug. 99	G1
	Mr. A.K. Bhattacharjee with family	Minister	Aug. 99-Mar. 02	G1
	Mr. B.S. Bishnoi with family	Counsellor	Mar. 02-till date	G1
Apt. 22/23	Mr. S.C. Mehra with family	Counsellor	Jan. 93-May 94	G1
	Mr. P.V. Kumar with family	Minister	May 94-July 98	G1
	Mr. V.K. Tiwathia with family	Minister	July 98-July 02	G1
	Mr. H.V. Shringla with family	Counsellor	July 02-till date	G1
Apt. 21	Mr. R. Vishawanathan with family	Minister	Jan. 93-April 96	G1
	Mr. A. Manickam with family	Counsellor	Apr. 96-Aug. 99	G1
	Mr. S.C. Mehta with family	Counsellor	Aug. 99-Aug. 02	G1
	Mr. Jaideep Mazumdar with family	Counsellor	Aug. 02-till date	G1

Apt. 20	Mr. Suresh K. Goel with family	First Secretary	Jan. 93-June 96	G1
	Mr. V. Narayanan with family	Attache	May 98-June 99	G1
	Mr. R.C. Joshi with family	First Secretary	June 99-Aug. 02	G1
	Mr. R.K. Chawla with family	Second Secretary	Aug. 02-till date	G1
Apt. 19	Mr. Nikhil Seth with family	Counsellor	Jan. 93-Sept. 93	G1
	Mr. Arun K. Singh with family	Counsellor	Sept. 93-Dec. 97	G1
	Mrs. Nandini K. Iyer with family	Counsellor	Dec. 97-June 00	G1
	Mrs. Vijay T. Singh with family	Counsellor	June 00-July 03	G1
	Mr. Alok K. Sinha with family	Counsellor	July 03-till date	G1
Apt. 18	Mr. Ranjit Rae	Counsellor	Jan. 93-Feb. 94	G1
	Mr. V.K. Gokhale with family	Counsellor	Feb. 94-July 98	G1
	Mr. Atul Khare with family	Counsellor	July 98-Jan. 01	G1
	Mr. B.S. Bishnoi with family	Counsellor	Jan. 01-Mar. 02	G1
	Mrs. Mukta D. Tomar with family	Counsellor	Mar. 02-Aug. 02	G1
	Mr. Amreet Ahluwalia with family	Counsellor	Dec. 03-till date	G1
Apt. 17	Mr. S.R. Chinoy with family	First Secretary	Jan. 93-May 95	G1
	Mr. Syed Akbaruddin with family	First Secretary	May 95-Sept. 98	G1
	Mr. Y.K. Sinha with family	Counsellor	Sept. 98-Mar. 02	G1
	Mrs. Ruchira Kamboj with family	Counsellor	Mar. 02-till date	G1

Apt. 16	Kum M. Manimekali	First Secretary	Jan. 93-Feb. 96	G1
	Mr. G. Mukhopadhyay with family	Counsellor	Feb. 96-June 99	G1
	Dr. AVS Rameshchandra with family	First Secretary	June 99-July 02	G1
	Mr. Sanjiv Ranjan with family	First Secretary	Apr. 03-till date	G1
Apt. 15	Mr. S.C. Chaturvedi with family	First Secretary	Jan. 93-Dec. 94	G1
	Dr. S. Rama Rao with family	First Secretary	Dec. 94-Aug. 98	G1
	Mr. Narinder Singh with family	First Secretary	Sept. 98-Apr. 02	G1
	Dr. M. Gandhi with family	Counsellor	May 02-till date	G1
Apt. 14	Mr. Rahul Kulshreshtha with family	Second Secretary	July 93-Feb. 97	A1
	Mr. Anil K. Sharan with family	Second Secretary	Feb. 97-Feb. 00	A1
	Mr. HVS Manral with family	Minister	Feb. 00-May 03	A1
	Mr. Joginder Pal with family	Second Secretary	May 03-till date	A1
Apt. 13	Mr. S.M. Trehan with family	Second Secretary	Jan. 93-Jan. 94	A1
	Mr. T.D. Aggarwal with family	Second Secretary	Jan. 94-July 97	A1
	Mr. Sohan Prakash with Family	First Secretary	July 97-Dec. 00	A1
	Mr. Santosh Jha with family	First Secretary	Dec. 00-till date	A1
Apt. 12	Mr. V.V.S. Subba Rao with family	Second Secretary	Jan. 93-Jan. 96	A1
	Mr. Sonam Wangdus with family	Second Secretary	Jan. 96-Aug. 99	A1
	Mr. A.S. Bajpai with family	Second Secretary	Aug. 99-Jan. 03	A1
	Mr. Vinod Bhandari with family	Second Secretary	Jan. 93-till date	A1

Apt. 11	Mr. A.K. Trigunayat with family	Second Secretary	Jan. 93-Mar. 96	A1
	Mr. M.L. Gilautra with family	Second Secretary	Mar. 96-Oct. 97	A1
	Mr. D.K. Paliwal with family	Second Secretary	Oct. 97-June 02	A1
	Mr. R.N. Panda with family	Second Secretary	June 02-till date	A1
Apt. 10	Mr. S. Sudarsanam with family	Second Secretary	Jan. 93-Dec. 94	A1
	Mr. Vishnu Prakash with family	Second Secretary	Dec. 94-July 96	A1
	Mr. A.S. Toor with family	First Secretary	July 96-June 01	A1
	Mr. Rattan Singh with family	First Secretary	June 01-till date	A1
Apt. 8/9	Mr. I.K. Raina with family	Second Secretary	Jan. 93-Jan. 96	A1
	Mrs. Vaneja Kumari with family	Attache	Jan. 96-June 99	G1
	Mr. Anil Saxena with family	Attache	Aug. 99-Oct. 02	G1
	Mr. A.S. Takhi with family	Attache	Oct. 02-till date	G1
Apt. 7-A	Mr. Manohar Lal	Chauffeur	July 93-July 95	G1
	Mr. Tilak Raj	Chauffeur	July 95-Nov. 98	G1
	Mr. K.C.S. Nair	Chauffeur	Nov. 98-Jan. 02	G1
	Mr. Manmohan Singh	Chauffeur	Jan. 02-till date	G1
Apt. 7-B	Mr. Satyawan Singh	SG	June 93-Nov. 95	G1
	Mr. Bijender Singh	SG	Nov. 95-Mar. 98	G1
	Mr. V. Krishan Kumar	SG	Mar. 98-Mar. 00	G1
	Mr. Pawan Kumar	SG	Mar. 00-Oct. 01	G1
	Mr. Amir Singh	SG	Jan. 02-till date	G1

Apt. 7-C	Mr. Vinod Kumar	SG	Sept. 93-Feb. 96	G1
	Mr. B.A. Fernades	SG	Feb. 96-Mar. 98	G1
	Mr. V. Radhakrishnan	SG	Mar. 98-Mar. 00	G1
	Mr. Madan Lal	SG	Mar. 00-July 02	G1
	Mr. Anil Kumar	SG	July 02-till date	G1
Apt. 7-D	Mr. Ved Prakash Yadav	SG	Jan. 93-Dec. 94	G1
	Mr. Bajrangi Sinha	SG	Dec. 94-Jan. 97	G1
	Mr. Narender Kumar	SG	Jan. 97-Nov. 98	G1
	Mr. M.K. Chattaerjee	SG	Nov. 98-Jan. 02	G1
	Mr. John Thomas	SG	Apr. 02-till date	G1
Apt. 7-E	Mr. Birbal Ram	SG	Jan. 93-July 94	G1
	Mr. Darshan Lal	SG	July 94-Sept. 96	G1
	Mr. Laxmi Narain	SG	Sept. 96-Nov. 98	G1
	Mr. Joginder Singh	SG	Nov. 98-Feb. 01	G1
	Mr. Neeraj Kumar	SG	Feb. 01-May 03	G1
	Mr. G. Pillai	SG	May 03-till date	G1

Exhibit B

For Official use only

HANDBOOK

OF

Rules and Regulations

RELATING TO

The Indian Foreign Service

VOLUME I
(Corrected upto June 30, 2000)

[LOGO]

Issued by THE GOVERNMENT OF INDIA
MINISTRY OF EXTERNAL AFFAIRS

PART - I

INDIAN FOREIGN SERVICE (PAY, LEAVE, COMPENSATORY ALLOWANCES AND OTHER CONDITIONS OF SERVICE) RULES, 1961
(AS AMENDED)

Authority:- Ministry of External Affairs Notification NO. 778/GA/61, dated 15-12-61, as amended from time to time.

* * *

ANNEXURE X

RESIDENTIAL ACCOMMODATION AND FURNITURE

[Authority:- M.E.A. No. F.21(14)/GA/60-Vol.II, dated 31st March, 1962]

[] S.I. XVIII under Annexure X of IFS(PLCA) rules(1990 edition)

I. **Introductory: -** (1) When serving outside India, an officer shall be entitled, subject to such conditions as may be prescribed by the Government, free of charge, to furnished residential accommodation in accordance with the subsequent provisions of this Annexure.

(2) For the purposes of sub-paragraph (1) above, the term 'furnished residential accommodation' shall ordinarily include furniture, carpets, durries, draperies, crockery, cutlery, glass-ware, electric bulbs and a cooking range of the type in common use in the foreign country concerned, subject to the provisions of sub-paragraph (5).

(3) In the case of the residence of a Head of Mission and [HOPs of Grade III] the furnished residence may include, in addition to the items mentioned in sub-paragraph (2), a refrigerator, a radiogram, kitchen utensils for representational entertainment and such other item or items as the Government may, by general or special order, sanction for use for representational purposes. All these items will be subject to the scales provided for in sub-para (5).

(4) In the case of a Head of Post other than at (3) above, the term 'furnished residence' may include, in addition to the items mentioned in sub-paragraph (2) such of the other items mentioned in sub-paragraph (3) as the Government may, by general or special order, sanction for any particular post, and subject to the scales provided for in sub-para (5).

(5) The Government may, by general or special order, prescribe in respect of any officer or category of officers, the scale of accommodation and the scale, type and quality of the furniture and furnishings e.g. carpets, draperies, crockery, cutlery, glass-ware and any other admissible item to be provided at Government expense in the residence(s)

of such officers. For scales already laid down please see Appendices I, II (A) to (H) to this Annexure. The Government may also prescribe the monetary ceiling in respect of rental accommodation, furniture, carpets, crockery etc.

2. Government-owned accommodation – (1) Where Government own property at a station abroad, they may reserve that property or a portion thereof as the residence of the Head of Mission/Post, or for an officer of a particular designation in the Mission, or may declare the property to form part of a pool of residential accommodation available at that Mission.

(2) Where any particular accommodation has been specified by the Government as the residential accommodation reserved for a particular officer (including the Head of Mission/Post) such officer may not, without prior sanction of the Government, stay at Government expense at a hotel or take alternative residential accommodation. If such an officer without prior Government sanction, stays at a hotel or rents other accommodation, the hotel charges or the rental of the alternative accommodation shall be borne entirely by the officer concerned:

Provided that where an officer, for whom Government-owned accommodation is reserved, is under orders of transfer and is to avail of his preparation time of eight days and where his successor has arrived before the completion of the preparation time of eight days, the Head of Mission or Post may, if he considers it necessary, authorise the stay of one or the other officer at a hotel for a period not exceeding eight days plus the period of any overlap sanctioned when no other suitable Government-owned or leased accommodation is available.

(3) (i) Where Government-owned accommodation reserved for a particular officer has, for reasons beyond the control of the officer, become uninhabitable or where the officer is required to vacate it for purposes of major repairs or renovations, the Ministry may permit the officer to stay in a hotel.

(ii) Where Government-owned accommodation is not reserved for a particular officer or an officer of a particular designation and is declared to be in the pool, it shall be allotted by or under the orders of the Head of Mission/Post in accordance with such regulations as the Government may prescribe and where the Government have not prescribed any regulations in accordance with such local regulations as the Head of Mission/Post may prescribe.

(iii) An officer to whom Government-owned accommodation in the pool is allotted by or under the authority of the Head of Mission/Post shall occupy such residence within such period as the Head of Mission/Post may specify. An officer who declines or fails to do so will not be eligible either for alternative accommodation at the expense of the Government or for the reimbursement of hotel charges if he stays in a hotel:

Provided that the officer shall again become eligible for the allotment or supply of residential accommodation at the expense of the Government after a period of three months or the date on which the accommodation offered to him is occupied by any other officer of the same rank, status and entitlement as himself whichever date is later.

(4) The plinth area norms for construction of residential buildings for India-based officers and staff abroad would be as follows: –

(i) Class IV, including Security Guards, non-diplomatic staff	40 sq. meters
(ii) LDC, UDC, Assistant and other non-diplomatic staff	75 sq. meters
(iii) Third Secretary/Attache/PS	110 sq. meters
(iv) First Secretary/Second Secretary	150/130 sq. meters
(v) Counsellor	170 sq. meters
(vi) Ambassador and Minister	To be decided on merits

In addition to the area of the main unit mentioned above, additional area for circulation/stair cases etc. would be permissible. A variation of 2% will be allowed.

As regards renting of accommodation, the Missions may continue to lease residential accommodation on room-wise basis as laid down in Appendix I of this Annexure. However efforts should be made to ensure that the plinth area of rented property does not vary significantly from the 'norms' prescribed for construction above.

(No. Q/Prop/551/9/86 dated 5th August, 1986)

3. Accommodation taken by Government on long lease: Where the Government have acquired a lease of any accommodation for a period exceeding three years, such accommodation shall, during the currency of the lease, rank as Government-owned accommodation and all the provisions of paragraph 2 above shall apply, *mutatis mutandis*, to an officer for whom it is reserved or to whom it is allotted. In obtaining accommodation on long lease, the Head of Mission/Post will ensure that the cautionary measures provided under para 4 are kept in mind.

4. Accommodation taken by Government on short lease: (1) Where at a station, accommodation to which paragraphs 2 and 3 apply, is not available for any particular officer serving at that station, the Head of Mission/Post may, subject to paragraph 1 above and to the provisions of sub-paragraph (2) to (13) below, obtain residential accommodation for such officer by executing a short lease not exceeding three years in duration.

(2) The Government may prescribe, by general or special orders, the ceiling rentals within which accommodation for an officer or a category of officers shall be obtained on short lease by the Head of Mission under the provisions of sub-paragraph (1) and may prescribe separate ceilings where necessary for furnished, unfurnished or partly furnished accommodation and separate scales or ceilings according to marital status or size of family.

(3) Subject to considerations of economy and the prescribed rental ceiling, the accommodation taken on short term lease should normally be within a reasonable distance of the Chancery, particularly in respect of a representational officer.

(4) Where the Head of Mission is satisfied that suitable accommodation for an officer cannot be found in reasonable time within rental ceiling prescribed by the Government under sub-paragraph (2) he shall, with a view to avoiding heavy expenditure on hotel charges, arrange residential accommodation (even a smaller accommodation than the entitlement) for the officer within the rental prescribed for him even if it means taking a building with lesser accommodation than his entitlement.

(5) In obtaining accommodation on short lease, the Head of Mission/Post shall ensure that accommodation to which

the furnished or partly furnished rate of rental ceiling applies has as far as possible the prescribed complement of furniture, draperies, carpets and other items (excluding crockery, cutlery and glassware) admissible to the officer for whom the accommodation is rented. If he finds that the full complement of such articles is not provided by the landlord in the accommodation to be rented even at an enhanced rent (which shall of course be subject to the prescribed ceiling) he shall estimate the approximate cost of the items which will subsequently have to be provided to the officer at the expense of the Government and the rental ceiling for the accommodation for the officer, as sanctioned by the Government, shall stand reduced by a monthly amount equal to 1.5% of the estimated cost of the articles to be supplied at the cost of the Government.

(6) The lease entered into by the Head of Mission under the provisions of this para shall ensure that normal maintenance and repairs of the property shall be duly carried out by the landlord, and that no claim for damage to the property or the contents thereof shall be admissible in respect of fair wear and tear, that the property is at all stages fully habitable and available for purposes of residence including representational entertainment, that it is wind and weather tight and that the government, or the officer nominated by them, shall have quiet and peaceful possession thereof during the course of the tenancy. To the extent possible, the lease shall be executed in the form laid down in Appendix III to this Annexure.

Before a lease is signed, the Missions must satisfy themselves that the landlord will abide by the terms of the lease and if necessary secure guarantee for the fulfillment of the agreement by the landlord. Missions have no authority to carry out repairs and maintenance of the leased

buildings at Government cost if in the terms of the lease it is the responsibility of the lessor. For incurring any expenditure in such cases, prior sanction of the Government has invariably to be sought.

(7) Wherever possible, the Head of Mission, shall before executing the lease, have the accommodation and the contents thereof duly surveyed by a reputable firm of surveyors and obtain a survey report. A similar survey report shall be obtained at the end of the period of tenancy. The survey report shall, inter alia, indicate loss or damage which is solely attributable to fair wear and tear, loss or damage which has occurred owing to negligence or misuse and loss or damage which is not fair wear and tear but which has occurred due to causes beyond the control of the occupant.

(8). (i) The Head of Mission shall ensure that the property leased and the contents thereof are fully insured by the landlord or alternately, that the landlord expressly accepts the risk of destruction or damage owing to causes beyond the control of the tenant or occupant.

(ii) In case the property and its contents are not insured by the landlord and the landlord refuses to get them insured at his cost and insists upon the property and the furniture being insured as a pre-condition for renting the accommodation and furniture, the Mission concerned should try to have the rent raised to include insurance charges rather than take out the insurance in the name of the Mission. The final rent should, however, not exceed the rental ceiling applicable to the officer/member of staff for whom the house is being rented. The ceiling rental will thus include the rent of unfurnished accommodation and

the rent of furniture, besides an element to cover the insurance of furniture and accommodation.

9 (i) As far as possible, the Head of Mission shall ensure that the lease incorporates a break clause (generally known as the 'diplomatic break clause') under the provisions of which the lease can be terminated at a notice of one month or other similar short notice not exceeding two months, in the event of breach of diplomatic relations with that country or the transfer of the particular officer for whom the accommodation is being leased and for the refund of rent, if paid in advance, for the unexpired period of lease.

(ii) Where the owner or landlord does not agree to the diplomatic break clause, either in full or in part, and the Head of Mission/Post is satisfied that no alternative accommodation is likely to be available on better terms within the foreseable future, he may execute the lease without the diplomatic break clause provided that the officer for whom the house is being leased is normally expected to remain at the station for the period for which the lease is executed. Where, however, there is a possibility of such an officer being withdrawn by the Government before the expiry of such period, either because the officer will complete his term before the date of expiry of the lease or because the post he is holding is a special or additional post sanctioned for a specified period, the lease shall not be executed and, where necessary, the matter referred to the Government for orders.

(10) For the purpose of obtaining accommodation on lease under the provisions of this rule, the Head of Mission/Post may incur, and pay, obligatory charges incidental to the lease including customary agents' commission, if

any, surveyors' fees and, in cases of disputes arising out of the lease, also such legal charges as may be necessary and as fall within his financial powers vide item No. 13 of the Schedule 1 of the booklet entitled "Financial Powers of the Govt. Of India's Representatives Abroad".

(11) Normally the lease shall provide that the only financial responsibility of the Government shall be the payment of the rent as laid down in the lease. If, however, the Head of Mission finds it necessary to execute a lease according to which certain obligatory charges are to be met by the Government, he may execute the lease accordingly, provided that in that event the rental ceiling fixed by the Government for the officer concerned shall stand reduced by the amount of the additional monthly expenditure falling on the Government under the terms of the lease.

(12) (i) Only where an officer is under general or special orders issued by the Government, entitled to a telephone at his residence, any charges levied by the Telephone Department or Company or by the landlord in respect of the installation or retention of a telephone at the residence of the officer, shall be borne by Government separately from the rental paid for the residence and if the charges in respect of the telephone form part of the rental to be paid for the residence the ceiling sanctioned by Government in respect of such officers when additional charge on account of telephone and the actual rent of the house exceed the prescribed ceiling, shall be increased by the average monthly payment on account of the telephone.

(ii) Where an officer is not entitled to a telephone at his residence but a telephone already exists at the residence leased for such officer and the landlord is not prepared to have it disconnected or the cost of such disconnection

would be disproportionate to the savings effected thereby, the Head of Mission may permit the telephone to be retained at the residence provided that the rental of the accommodation, including the rental but not the call charges of the telephone, does not exceed the rental ceiling fixed by the Government.

13 (i) Where the accommodation proposed to be leased for an officer contains articles to which an officer is not entitled on the basis of the scale of furniture etc. prescribed by the Government e.g. refrigerator, radiogram, washing machine, objets d'art, linen, etc. the Head of Mission/Post shall, wherever possible, arrange for the landlord to remove and store such articles separately.

*ii) The officer should also see that the accommodation leased for him contains only the furniture and furnishings to which he is entitled and they have been specifically mentioned in the lease deed. All other items of furniture etc. should be brought to the notice of the Head of Mission in writing by the occupant. Government will not be responsible for any charges on this account.

(iii) Where the landlord does not agree to remove and store such articles separately, the Head of Mission shall ascertain in writing from the officer for whom the accommodation is to be leased whether the latter is prepared to assume full responsibility for the upkeep and maintenance of such articles and for making payment for any damage or loss in respect of such articles. If the officer accepts such liability in writing and if the rental for the accommodation, including the use of such articles, does not exceed the

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* Para 3 of S.I. IV under Annexure X of IFS (PLCA) Rules (1990 edition) added.

rental ceiling fixed by the Government, the Head of Mission/Post may execute the lease. But any charge on account of electricity, municipal taxes etc. shall be borne by the officer. If the officer does not accept the liability or if the rental for the accommodation, including the use of such articles, exceeds the rental ceiling fixed by the Government, the lease shall not be executed. In such cases, the Head of Mission/Post shall not exercise the financial powers delegated to him by the provisions of sub-paragraph (4) above.

iv) Where an officer has assumed in writing the liability referred to in clause (iii) above and subsequently fails to maintain or safeguard the articles referred to in clause (i) or fails to make payment for any loss or damage appertaining thereto, the Head of Mission/Post may assess or cause to be assessed the extent of the loss or damage as well as the compensation payable to the landlord thereon. He shall thereafter call upon the officer concerned in writing to make payment of the sum assessed to the landlord or to his specified agent by the date specified by the Head of Mission. Where the officer fails to make payment by the date specified by the Head of Mission and within one month thereafter, the Head of Mission may make payment from Government funds for the loss or damage assessed under intimation to the accounts authority concerned with the request to such authority to recover the sum in one or more installments, not exceeding six, from the salary of the officer concerned. The accounting authority concerned shall thereupon deduct the said amount or amounts from the salary of the officer concerned.

14) If an officer for whom accommodation is reserved under the provisions of this para is under orders of transfer and is to avail of his preparation time of eight days and where his successor has arrived before completion of such preparation time of eight days, the Head of Mission/Post may, if he considers it necessary, authorise the stay of one or the other officer at a hotel for a period not exceeding eight days plus the period of any overlap sanctioned when no other suitable Government owned or leased accommodation is available.

*15) All the terms and conditions of the lease should invariably be stated in the lease deed. There should be no private understanding between the landlord and the occupant on any account. If the landlord wishes to have some private arrangement with the occupant regarding the payment of charges on account of water/electricity/ gardening etc. these should be on record either in the lease deed itself or in the form of letters exchanged with the Mission. The Mission should, see that all such terms and conditions are accepted by the occupant. No cognizance will be taken of any private arrangements between the landlord and the occupant. If any claims are received from the landlord on this account after the departure of the officer from the station those will have to be met by the officer himself.

*(16) No accommodation which is in excess of the entitled scale of the officer should be rented without prior approval

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* Para 1 of S.I. IV under Annexure X of IFS (PLCA) Rules (1990 edition) added.

* S.I. III under Annexure X of IFS (PLCA) Rules (1990 edition) added.

of the government except where the monthly rent of such accommodation is within the ceiling rental fixed by the Government and the Head of Mission is, therefore, empowered to rent it. Full particulars of the accommodation rented in the prescribed form should invariably be intimated to the Ministry in each case even when renting is done under the Mission's own powers.

Verbal assurances to landlords/agents which might embarrass the Government/Mission later on should be avoided.

**(17) Heads of Missions have been authorised to increase the prescribed rental ceiling for a normal family unit by 10% where there are more than two children living with an officer abroad and not less than two of the children are above the age of six years. It, has further been enjoined therein that this relaxation of 10% increase should be avoided as far as possible and allowed only in genuine case of hardship. This concession shall be granted only on a specific application being made by the official concerned for the increase. In making this application the official shall state whether the children in respect of whom additional accommodation is required will continue to stay with him during the entire period for which the concession is proposed to be availed of. Any changes in the number of children actually staying with the officer should immediately be brought to the notice of the Head of Mission, who should decide whether the concession should be continued or not.

** S.I. II under Annexure X of IFS (PLCA) Rules (1990 edition) added

*(18)(i) Missions for which rental ceilings have been prescribed should not exceed the rental ceilings without prior approval of the Government. Proposals for hiring residential accommodation at rents in excess of the prescribed ceiling should be referred to the Ministry complete in every respect and there should be a margin of at least 10 days for the Ministry to take a decision.

(ii) Missions for which rental ceilings have not been prescribed should invariably forward all proposals with complete details in the prescribed proforma showing rental of the proposed accommodation and the reason why it is in excess of the existing operative ceiling.

5. **Obligations of an officer provided with furnished accommodation which is Government-owned or taken on long lease** – (1) An officer who is provided with accommodation owned by the Government or taken by the Government on long lease shall before taking possession of such accommodation, carry out a complete check of the premises and the movable contents thereof. He shall also compare the movable property in the premises with the list of such property as carried in the compendium of Government property in the Mission/Post. He shall bring in writing to the notice of the Head of Mission/Post any discrepancies, shortages, defects or any other points relevant to the safeguarding of the Government's financial interests, or if the officer is himself the Head of Mission/Post, to the notice of the Ministry.

(2) Such an officer shall also, during the course of the allotment to him of such accommodation, promptly bring

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* S.I. IX under Annexure X of IFS (PLCA) Rules (1990 edition) added.

to the notice of the Head of Mission/Post, or of the Government, as the case may be, any damage to the building or its appurtenances or to the moveable contents thereof or any loss or any event or occurrence which has a bearing on the interest of the Government in such property.

(3) Such an officer shall also make an inventory of the movable property belonging to the Government in his possession at the time of his vacating such accommodation and shall compare it with the compendium of Government property maintained by the Mission or Post. He shall report in writing any loss or damage to Government property which has occurred during the period of his occupation of the premises.

(4) The Head of Mission/Post [which term includes for the purposes of this sub-paragraph and sub-paragraph (5), the Government in respect of the Head of Mission/Post] shall decide whether any portion of the aforesaid loss or damage is ascribable to negligence or misuse and, if so, shall assess or cause to be assessed the value thereof. He may call upon the officer to make payment for such loss or damage.

(5) If there has been no loss or damage, or if no portion of such loss or damage is ascribable to negligence or misuse or if the officer has paid the amount which the Head of Mission has called upon him to pay under the provision of sub-paragraph (3) the Head of Mission/Post shall give, or cause to be given to the officer, a clearance certificate stating that nothing is due from the officer in respect of his occupancy of Government owned or long leased accommodation at the station.

(6) Where an officer has been called upon to pay for such loss or damage, as has been assessed by the Head of

Mission/Post or under his authority, to have been caused by negligence or misuse on the part of the officer or his family or his servants, the officer shall, if he considers that the loss or damage has been wrongly ascribed to negligence or misuse, pay the amount to the Mission or Post under protest and may thereafter lodge a representation to the Government through the Head of Mission/Post. The decision taken by the Government shall be final.

(7) Where the Head of Mission is satisfied that any loss or damage caused to Government property, furniture, furnishings, fixtures, etc., during the period of occupancy of a particular officer cannot be ascribed to negligence or misuse, he may write off the loss or damage, under the powers delegated to Heads of Missions under item 1 of Schedule II of the "Financial Powers of the Government of India's Representatives Abroad". If the loss or damage exceeds the amount upto which powers have been delegated to him, he shall report the matter to the Government for their decision. The Government may thereupon take such decision as they consider fit and proper, provided that if the Government consider that any part of loss or damage is ascribable to negligence or misuse and should be paid for by the officer, the Government shall give an opportunity to the officer to show cause against the proposed decision.

(8) The provisions of para 6, sub-paras 1-8 below shall apply *mutatis mutandis to accommodation taken on long lease.*

6. Obligations of an officer provided with residential accommodation taken on short lease – (1) Where an officer has been given accommodation obtained by the Head of Mission on a short term lease in accordance with

paragraph 4, such officer shall unless a survey of the property and its contents has been carried out under the provisions of sub-paragraphs (7) of paragraph 4, himself carry out a general survey in collaboration with an officer nominated by the Head of Mission and the landlord or his representative. A detailed survey report shall be prepared of which a copy shall be retained by the officer and another by the Mission or Post.

(2) The officer shall maintain the property and its contents in fit and proper condition. He shall not carry out any additions or alterations in the property which may affect its structure and lead to claims for compensation without the specific approval of the Head of the Mission/Post.

(3) The officer shall promptly report in writing to the Head of Mission/Post, or to any officer nominated by him, any loss or damage or any other fact relevant to the lease entered into by the Head of Mission/Post.

(4) At the time of vacating the premises, unless a survey has been carried out under the provisions of sub-paragraph (7) of paragraph 4, the officer shall again carry out a complete survey of the property and its contents with the collaboration of an officer nominated by the Head of Mission/Post and the landlord or a representative or an agent. A copy each of the detailed survey report shall be retained by the officer and by the Mission/Post.

(5) Whether or not any damage or loss has occurred to the premises or their contents during the period of occupancy of the officer, the latter shall at the time of vacating the premises, obtain from the landlord a clearance certificate stating that the latter has received back the premises in good order and that no claim for loss or damage against

the occupant or the Government is outstanding. Where the premises are handed back not to the landlord but to the Mission/Post for the use of another officer, the officer shall obtain a clearance certificate from the Mission/Post.

(6) If the landlord is not willing to give a clearance certificate, the officer shall forthwith report the fact to the Head of Mission/Post. The Head of Mission shall thereupon assess or cause to be assessed which portion of the loss or damage is due to negligence or misuse or lack of proper maintenance on the part of the officer and shall assess or cause to be assessed the value thereof. He shall thereupon call upon the officer to pay the amount determined by him to the Mission/Post. If the officer pays the said amount by the date prescribed by the Head of Mission, the latter shall try to arrange for the landlord to give the clearance certificate against payment of such sum. If the landlord still declines to do so and if the Head of Mission considers that the claim or claims made by the landlord or his agent are either not sustainable or relate to items which, in his view, should be paid for by the Government, he shall grant the officer a provisional clearance certificate himself and report the fact to the Government for orders.

(7) Where an officer fails to take action as prescribed in sub-paragraphs (1), (4) or (6) or, prior to his leaving the station, to obtain the clearance certificate from the landlord or from the Mission/Post in accordance with sub-paragraph (5) or (6), and where subsequently claims against him are raised by the landlord or his agent, the Head of Mission/Post shall, after such reference to or consultation with the officer as may in his view be possible, assess or cause to be assessed the amount payable to the landlord in respect of the said claims. If the claims are

less than Rs.500 (Rupees Five hundred) in value, he may make the payment from Government funds and order recovery of the amount from the officer. Where the amount of the claim exceeds Rs.500 (Rupees Five Hundred), the Head of Mission shall report the facts to the Government. The Government may thereupon authorise payment by the Head of Mission/Post of the amount of the claim or such portion thereof as they consider reasonable and simultaneously order recovery of the total amount so paid from the salary of the officer. Unless the officer is able to show good and valid cause for his failure to take the prescribed action or to obtain the clearance certificate before his leaving the station, the Government will not agree to bear any portion of the expenditure incurred in meeting the claim.

(8) Where an officer is called upon by the Head of Mission to make payment in accordance with sub-paragraph (6) above and fails to do so, the Head of Mission shall report the facts to the Government with a view to the drawing up of departmental proceedings against the officer. It shall be open, however, to an officer to pay the amount under protest and lodge a representation to the Government through the Head of Mission/Post, in which case the Government shall pass such orders as may seem to them fair and just.

7. Discretion of Head of Mission in allotment of residential accommodation – (1) Where a Head of Mission/Post has obtained for a diplomatic officer residential accommodation on long lease or on a lease not containing the diplomatic break clause and such accommodation is, for any reason, lying vacant or likely to become vacant, the Head of Mission/Post may allot that accommodation to any other diplomatic officer or, at his discretion, to a

non-diplomatic officer of the Mission who has subsequently joined, or who, on the date of vacation of the accommodation, is staying at hotel. The order of allotment shall prescribe the date by which the officer should move to the premises allotted to him.

*(2) Head of Mission's residence can also be utilised partially or wholly as the case may be, by any other officer to avoid hotel expenditure with the approval of the Government. In case of any doubt Government's instructions should be sought immediately.

(3) On allotment of such accommodation, the officer to whom it is allotted shall occupy it for such period as the Head of Mission/Post may decide, having regard to considerations of economy and the status of the officer concerned.

(4) If any officer to whom the Head of Mission/Post has allotted the accommodation fails to occupy it, he shall cease to be eligible for accommodation at the expense of the Government or the reimbursement of hotel charges with effect from the date of expiry of the period specified by the Head of Mission/Post under sub-paragraph (1). He shall again become eligible for the allotment or supply of residential accommodation at the expense of the Government only when the accommodation which he has declined to occupy is occupied by another officer or the lease expires, whichever is earlier.

(5) Subject to the provisions of paragraph 4(4) the powers conferred on the Head of Mission/Post by this rule shall

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* Para 2 of S.I. III under Annexure X of IFS (PLCA) Rules (1990 edition) added.

not, except at the written request of the officer, be so exercised as to allot to any officer –

(i) accommodation which falls short of his entitlement by more than one room or is suitable for an officer who is more than one rank junior to him; and

(ii) allot to a diplomatic officer accommodation acquired for the use of a non-diplomatic officer, except that accommodation acquired or leased for a married non-diplomatic Group 'A' officer may, if the Head of the Mission/Post considers it suitable, be allotted to a single First Secretary, single/married Second Secretary or a single/married Third Secretary.

(6) Where a Head of Mission/Post has under his charge Government-owned or leased accommodation which is unoccupied and which he has been unable to utilise for a period of three months, even by the exercise of the powers conferred by sub-paragraph (1), he shall forthwith report the facts to the Ministry for orders. In the case of a leased building, the report shall be made as soon as it is felt that the accommodation is likely to remain vacant during the next three months.

(7)(i) An officer shall not be entitled to the cost of transporting effects, whether personal or belonging to the Government, from one residence in the same station to another such residence or from a hotel, whether on first or subsequent stay, to a residence or vice versa where the shifting is done voluntarily by him to obtain more satisfactory accommodation.

(ii) When the shifting is involuntary, i.e. not at the request of the individual officer but at the instance of

Head of Mission for any reason what so ever the expenditure incidental to the shifting of Government properties as also the personal effects to be shifted shall be met out of Government funds.

(iii) All cases of involuntary moves where shifting is done at public expense should, however, meet the following requirements: –

(a) The Mission should, wherever practicable make necessary arrangements for the transportation of effects both personal and Government, rather than reimburse the expenditure to the official concerned;

(b) shifting should not be encouraged unless it is inevitable; and

(c) all cases should have the prior approval of the Head of the Mission/Post and while approving the move he should certify that the shifting is in the public interest.

8. Stay at a hotel – (1) No officer should be put up in a hotel without the prior approval of the Ministry. The Head of Mission/Post may, however, authorise accommodation in hotel as provided for in proviso to Para 2 (2).

(2) During stay in the hotel the officer shall be entitled to draw cash allowance or double the Foreign Allowance whichever is less for the first 21 days and thereafter only normal Foreign Allowance shall be admissible. In case of newly opened Missions or Missions opened after remaining closed for some time, the officer shall be entitled to Cash Allowance or double the Foreign Allowance upto sixty days, if the hotel stay has been permitted by the Ministry.

(3) The accommodation should be arranged in one of the hotels on the approved panel of the Mission/Post.

(4) When a Head of Mission or any other diplomatic officer is lodged in a hotel on his arrival at a post abroad pending the provision of a regular accommodation, his private Indian servants whose cost of passage is borne by the Government will be entitled to accommodation in a hotel at Government cost subject to the following conditions : –

(i) The accommodation will not be more than what is admissible to a Group 'D' Government servant;

(ii) The accommodation is provided at the lowest possible rates;

(iii) The duration of stay in the hotel will not exceed the period for which the officer himself is permitted to stay in a hotel.

(5) **(A) Officers who are obliged to stay in a hotel due to non-availability of residential accommodation, shall be entitled to the scales of accommodation as laid down below : –**

(I) Heads of Missions :

(i) When not accompanied by family – A single bed room or, if a suitable room is not available, a double bed room plus a sitting room.

(ii) When accompanied by wife – Only a self contained suite consisting of a double bed room plus a sitting room,

(iii) When accompanied by wife & children – As in (ii) above plus –

(a) If a child upto three years of age – An extra cot in the same room. The charges for putting the cot to be met by Government separately.

(b) If a child over three years of age – A single bed room.

(c) If two children each over three years of age – A double bed room.

(d) If three children each over three years of age – (b) plus (c) above.

(e) If four children each over three years of age – Two double bed rooms.

(II) **Officers other than Heads of Missions :**

(1) Men not accompanied by family : Single bed room.

(2) When accompanied by family :

(a) When accompanied by wife only – A double bed room.

(b) When accompanied by wife and children – As in (a) above plus

(i) If a child upto three years of age – An extra cot in the same room. The charges for putting the cot to be met by Government separately.

(ii) If a child over three years of age – A single bed room.

(iii) If two children each over three years of age – A double bed room.

(iv) If three children each over three years of age – (ii) plus (iii) above.

(v) if four children each over three years of age – Two double bed rooms.

***9. Guidelines on arrangement of residential/hotel accommodation for the officer : –** (1) The stay of officer in hotel on first arrival should be avoided as far as possibl . HOMs are empowered to accommodate the officers in hotels only on first arrival during the joining time availed by them/their predecessors in the Mission, if no other suitable accommodation is available. In all other cases prior sanction of the Ministry should invariably be obtained before incurring additional expenditure. To minimise the stay of officers in hotels on first arrival, the Missions should follow the undermentioned procedure :

(i) On receipt of the advance intimation about the size of the family of the officer on transfer, the Mission should examine whether the accommodation already rented for the relieved officer, may be retained for the officer if the terms of the lease so permit and the accommodation is in conformity with the prescribed scale. If the lease cannot be extended or the scale of entitlement is significantly different from that of the relieved officer, the Mission should look for alternative accommodation within the ceiling rental or at the existing rent whichever is less, synchronising the lease with the arrival of the incoming official to the maximum extent possible.

(ii) In case the Mission finds it difficult to arrange accommodation in time, the Personnel Section in the Ministry should be immediately informed to defer the departure of the incoming officer.

(iii) In case of difficulty in finding entitled accommodation within the prescribed rental ceiling, a formal proposal

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* S.I. XVI under Annexure X of IFS (PLCA) Rules (1990 edition) added.

should be immediately submitted to the Property 1 Section of the Ministry for sanctioning the rent proposed or for raising the rental ceiling.

(iv) In case where the relieving officer is likely to arrive after the departure of the relieved officer, the desirability of retaining the accommodation of the relieved officer for the intervening period may be examined in detail and the proposal referred to the Ministry. In particular, it may be checked that the accommodation proposed to be retained is fit from all points of view for his successor.

(2) It is the primary responsibility of the Chancery to find accommodation for the officers and staff. The Chancery should maintain a record of all action taken in each individual case to obtain residential accommodation. It is not for the officers to pick and choose their accommodation, even if the accommodation is slightly below their entitlement, and if it is otherwise found suitable by the Chancery, the officer concerned should move into it in the overall interests of Government.

[No.Q/Accts.I/7342/1/77, dt.27/4/1978]

10. Heating – (1) On the recommendations of the Foreign Service Inspectors or of the Head of Mission/Post, the Government may declare that on account of extreme climatic conditions it is necessary to provide for the heating of offices and residences of officers at a particular station. The stations to which this concession has already been extended are listed in Appendix V to this Annexure.

(2) Where the Government have made a declaration in respect of any station in terms of sub-paragraph (1), the Head of Mission/Post; may prescribe, from year to year, the date on which heating at the expense of the government

may commence in that year as also the date on which heating will be discontinued at the end of the cold weather in that station. This may be done both in respect of the Chancery and the residences except where the heating is provided by the landlord as part of the tenancy. In such cases regardless of whether or not the heating charges are included in the rent or are claimed by the landlord as a compulsory charge, an order should be issued by the Head of Mission/Post indicating the non-heating period for which the expenditure on account of running hot water, if provided, is to be met by the officer concerned himself provided that if such running hot water during non-heating period is supplied as a part of the central heating system, the expenditure will continue to be borne by the Government. As regards his own residence, the Head of Mission/Post should report the relevant dates to the Ministry for formal approval.

(3) Where the heating is provided by means of a central heating system, the expenditure on such heating including the cost of oil, or other fuel, maintenance of the heating system, annual cleaning, removal of soot or ashes, shall be met by the Government.

(4) The Head of Mission/Post, in consideration of the local climatic conditions and other relevant factors, shall fix the scale of oil, firewood, charcoal or coal, as well as reasonable monetary ceiling for incidental charges such as ash removing charges, stokers charges for all officers (including the Head of Mission/Post) and members of the staff subject to the following conditions : –

(a) The payment should be made on production of vouchers or receipts from reputed firms along with a certificate from the person concerned that the quantity of coal etc.,

has actually been consumed for the purpose of heating only and that the expenditure on incidental charges has actually been incurred for the purpose for which the ceiling is fixed; and

(b) The Mission should report the scales prescribed by the Head of Mission/Post for different grades of officers to the Ministry. Any variation to the prescribed scale should also be reported to the Ministry as and when occasion arises.

(c) [illegible] provisions shall not apply to the Missions where the Government have already prescribed heating allowance for heating charges.

(5) Where the heating is by gas or electricity, the expenditure on such heating shall be met by the Government. If there are no separate meters to indicate the amount of gas or electricity consumed specifically for space heating, the Head of Mission/Post shall determine what part of the total bill may be deemed to represent the additional expenditure on heating. The amount so determined shall be payable by the Government.

*(6) No heating appliance should be purchased out of Government funds for use in a building which is already centrally-heated. If, for any reasons, the need for purchase of such an appliance arises, Government's prior approval should invariably be obtained.

11. Upkeep of gardens at residences of Heads of Missions/Posts – (1) The Government will as indicated in

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* S.I. VI under Annexure X of IFS (PLCA) Rules (1990 edition) added.

sub-paras (2) to (4) meet the expenditure on the normal upkeep of any garden which may be attached to the residence of a Head of Mission/Post, unless the residence is in a leased building and under the terms of the lease the maintenance of the garden is the responsibility solely of the landlord.

(2) For the purposes of such upkeep the Government may sanction one or more full-time or part-time gardeners. Expenditure on the wages of such gardeners shall be met by the Government.

(3) Heads of Missions and Posts, vide sub-item (viii) of Annexure II mentioned under item 16 of Schedule I of the "Financial Powers of the Government of India's Representatives Abroad" have been authorised to purchase from Government funds the necessary garden implements and tools, including power-driven lawn mowers, for their residences, Chanceries and also for the residences of the other entitled officers. The cost of maintenance of such tools and accessories shall be met by the Government.

(4) For Government owned properties the Government may, by general or special orders, prescribe the annual amount up to which expenditure may be incurred by a Head of Mission or Post on manure, seeds, plants, flower-bulbs and water charges.

*(5) HOMs/HOPs would be entitled to a garden grant for purchase of seeds, plants, manure, flower pots etc. for the gardens attached to their residences, which have been taken on rent, as per following limits: –

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* S.I. XXI under Annexure X of IFS (PLCA) Rules (1990 edition) added.

I. Garden grant equal to 0.75% of the annual rent if the size of the garden is less than ¼th of an acre;

II. Garden grant equal to 1.25% of the annual rent if the size of the garden exceeds ¼th of an acre.

The disbursement of the grant would be either as direct payment by the Mission or as reimbursement of the expenditure incurred by the officer subject to the production of proper receipts for actual expenditure etc.

****12. Upkeep of gardens at residences of representational officers other than Head of Mission :** – The HOM/HOP (Cat I & II) may sanction the expenditure on maintenance of gardens attached to the residences of representational officers other than themselves for both Government owned & rented accommodation to the following extent: –

(a) Employment of part-time gardener : For each residence, upto one man hour per day, where the area of garden does not exceed one-fourth of an acre; upto two man-hours per day where the area of the garden exceeds one-fourth of an acre. Where help on an hourly basis is not available, the permissible number of man-hours in respect of all or any group of residences may be pooled together and within the total man-hours thus permissible a whole time gardener(s) can be employed on condition that the total man-hours of such gardener(s) do not exceed the total hours admissible under para 1 above.

** S.I. XXII under Annexure X of IFS (PLCA) Rules (1990 edition) added.

(b) Purchase of seeds, plants, fertilizers etc. :Rs.1000/- per annum where the area of the garden does not exceed one-fourth of an acre; Rs.2000/- per annum where the area of the garden exceeds one-fourth of an acre.

(2) In respect of a rented residence the above powers are to be exercised subject to the condition that under the lease agreement, the responsibility of maintenance of the garden attached to such a residence is not that of the lessor.

(3) Where the residence of the officer is a flat in a property leased by the Government, no expenditure shall normally be incurred out of Government funds for the maintenance of the common compound in which the building is situated. Where, however, in such a case, the terms of the lease make it compulsory for each tenant to make a contribution towards the maintenance of such common compound, the cost of such compulsory contribution may be met out of Government funds, provided always that the rental for the flat has been fixed at a figure the difference between which and the permissible rental ceiling for the residence of the officer concerned is sufficient to cover the cost of such compulsory contribution.

13. Prohibition of subletting – (1) An officer shall not, without the prior consent in writing of the Ministry, sublet the whole or any portion of the accommodation supplied to him by the Government.

(2) An officer shall not use any part of the accommodation given to him by the Government for the purposes of putting up paying guests or allow any person to use any part of the premises or any facilities attached thereto in return for a monetary or pecuniary gain.

(3) An officer may put up house guests, relations or personal friends, at the accommodation supplied to him by the Government provided that

(i) such house guests, friends or relations are on a casual visit to the station; and

(ii) such a guest, friend or relation, is not gainfully employed in the country of posting of the officer. This condition may be waived at the discretion of the Head of Mission if the circumstances so warrant.

(4) An officer shall not lend to or allow to be used by, any person who is not resident with him and to whom these regulations are not applicable, any part of the furniture, fittings, etc. or other property belonging to the Government and supplied to him for use at his residence.

14. Maintenance of residences – (1) It shall be the duty of the Head of Mission/Post to ensure that residential accommodation given to an officer, whether owned by the Government or leased on long or short lease, is in a state of good repair and in all respects habitable and that electrical, sanitary, water and other installations are in good working order.

(2) Where the accommodation is obtained on short lease and the landlord is responsible for the proper maintenance of the building and/or electrical, sanitary, water and other installations, the Head of Mission/Post shall make all necessary arrangements to ensure that on receipt of a report from the occupant to the effect that any part of the building is under repair or that any of the installations is not in working order, adequate and timely action is taken by the landlord to carry out the necessary repairs.

(3) [illegible] to which sub-paragraph (2) applies, the landlord cannot be contacted or fails, within reasonable time, to carry out adequate repairs, the Head of Mission may authorize, after duly informing the landlord, urgent repairs to the building or to any installation at a cost not exceeding, during the financial year, Rs.500 or ten per cent of the annual rental of the premises, whichever is less, and initially pay such charges out of Government funds and thereafter deduct such charges from the rent payable to the landlord. If in any case the cost so incurred is not recovered from the landlord the Head of Mission/Post shall report the circumstances of the case to the Ministry for such orders as the Ministry may think fit.

(4) Where the residence supplied to an officer is owned by the Government, the cost of annual maintenance as well as the cost of repairs, from time to time, to the building or any installations therein shall be met by the Government. The Head of Mission/Post may incur, during any financial year, expenditure on such maintenance upto the limit laid down, under item 4 of Schedule 1 of Financial Powers of GOI's Representatives Abroad.

(5) Where residential accommodation supplied to an officer has been taken on lease for a period of not less than one year and according to the terms of the lease the responsibility for maintenance and repairs does not lie with the landlord, the actual expenditure on maintenance and repairs of the building shall be borne by the Government. In such a case, the Head of Mission/Post may incur, during a full financial year, expenditure on such maintenance and repairs of buildings and installations therein upto the limit of 25% of the annual rent. Where the remaining period of the lease falling in any financial year ends before the end of the financial year, the amount

which may be incurred during that financial year shall be upto a limit of 10% of the annual rent.

(6) [illegible] residence provided to an officer has been taken on short lease for a period of less than one year and under the terms of the lease the responsibility for maintenance and repairs does not lie with the landlord the Head of Mission/Post may incur expenditure on repairs and maintenance of the building and installations therein subject to the following limitations : –

(i) where the repairs are of immediate nature and the premises cannot be used without such repairs; and

(ii) the expenditure on such repairs during a financial year does not exceed 10% of the actual rent payable in respect of the period of the lease falling within that financial year.

(7) Maintenance of a building shall be deemed to include minor plumbing work, such as clearing of blocked wash basins and waste pipes, stoppage of leakages etc.

(8) If the estimated cost of repairs on any occasion exceeds Rs.12,000/-, three quotations should normally be called for and the lowest quotation accepted. If the estimated cost exceeds Rs.24,000/- tenders should be invited. Whenever the lowest quotation is not accepted, reasons should be recorded. The condition of calling for tenders/quotations might be waived by the Head of Mission in special cases for reasons to be recorded. In the case of leased buildings, the powers mentioned above are exercisable on the condition that the Head of Mission is satisfied that such expenditure according to the lease deed is the responsibility of the lessee and that the lessee has the

right to remove the installations added by him, when the building is vacated.

*To avoid disputes with the landlords and consequent embarrassment to the Government, Missions should pay special attention to the upkeep of the office buildings by [illegible] laid down in the lease deed. In the case of longer leases, it is advisable to show the building to the landlord for inspection once in a year, or so, so that claims for last minute compensation and other complications do not arise at the time of surrender. There should be no difficulty to maintain the leased buildings in proper repairs at all times when expenditure can be incurred in this regard under item 4 of Schedule I of the 'Financial Powers of the Government of India's Representatives Abroad'. For the exercise of these powers, the Missions should ensure that necessary provision for funds is made annually at the next year budget stage. Care should also be taken to see that the landlord attends to the repairs etc. whenever these are his responsibility according to the lease deed, so that Government's liability is not increased in any way.

15. Retention of accommodation during leave . Retention of residential accommodation by officers proceeding on leave when they are expected to return to their post abroad after the expiry of such leave will be regulated under the provisions of para 2(2)(iv) and para 3(2)(iv) of Annexure XXIV.

16. Maintenance of the residence of Head of Mission/Post in his absence – The maintenance of the residence of Heads of Missions/Posts during the period

* S.I. VII under X of IFS (PLCA) Rules (1990 edition) added.

intervening between the departure of the incumbent and the arrival of his successor will be governed by the following provisions:

(i) In such of the Missions/Posts where the Government have not sanctioned a caretaker, security guard or watchman specifically for looking after the residence of the Head of Mission/Post, one of the local domestic servants of the outgoing Head of Mission/Post may be retained during the period intervening between the departure of the outgoing Head of Mission/Post and the arrival of his successor, to look after the building as well [illegible] and other valuable equipment provided by the Government so that the incoming Head of Mission/Post will find the house in running condition on arrival. The wages of this servant not exceeding the standard wage prescribed for such a servant in the orders sanctioning the *frais* of the Head of Mission during this intervening period shall be a direct charge on Government funds and debited to contigencies.

ii) In addition, the expenditure on electricity, water, gas heating/cooling plants etc., during this period upto the minimum extent found necessary by the outgoing Head of Mission for the upkeep of the building in good order, will also be met from Government funds and debited to contigencies.

iii) From the date the officer designated as Charged' Affaires ad interim moves to the residence of the Head of Mission, the expenditure referred to in clause (ii) above shall be met by him/her for the period he/she occupies the residence. The wages of the servant referred to in clause (i), if still retained, will cease to be a charge on Government funds, and will have to be met by the officer concerned.

(iv) If any other officer (other than the Charge d' Affaires ad interim) or member of the staff, is allowed to occupy part of the premises during such periods, part of expenditure incurred under item (ii) will be recovered from the official concerned. The amount to be recovered will be decided by the Government in each individual case.

17. Categorisation of furniture and equipment for residences – (1) The Government may, by general or special order, prescribe the articles of furniture and other equipment which will be supplied to each Mission/Post underarrangements made by the Ministry.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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THE CITY OF NEW YORK,

Plaintiff,

-against- No. 03 CV 3256 RCC

THE PERMANENT MISSION OF INDIA TO THE UNITED NATIONS, et al.,

Defendants.
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INDIA'S SECOND SUPPLEMENTAL RESPONSES TO PLAINTIFF'S FIRST SET OF INTERROGATORIES AND FIRST REQUEST FOR THE PRODUCTION OF DOCUMENTS FOR THE PURPOSE OF JURISDICTIONAL DISCOVERY

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, defendant The Permanent Mission of India To The United Nations ("India"), by its attorneys Kaye Scholer LLP, hereby further responds to Plaintiff The City of New York's First Set of Interrogatories (the "Interrogatories") and First Request for the Production of Documents for the Purpose of Jurisdictional Discovery (the "Document Requests") as follows:

PRELIMINARY STATEMENT

In light of Judge Maas' November 22, 2004 Memorandum Decision, India submits this second supplemental response in an effort to resolve all remaining discovery issues concerning jurisdiction so that the reference to Judge Maas may be closed and the parties may proceed

with briefing on India's motion to dismiss on sovereign immunity and jurisdictional grounds. In this regard, India notes that the City has had since January 16, 2004 a complete list of the names, titles, visa and diplomatic status, and dates of occupancy of each tenant of record in the Permanent Mission of India to the United Nations (the "Indian Mission"), and that since that date the City has also had a sworn affidavit and other materials setting forth the policies and procedures by which India provides such housing, without charge, to those tenants of record. While India believes that no further information is required to decide the jurisdictional and sovereign immunity issues – and while the City has not described how any additional information would be necessary to decide the jurisdictional and sovereign immunity issues – India submits this supplemental discovery response in accordance with Judge Maas' November 22, 2004 Memorandum Decision, and in the interest of avoiding further delay to the resolution of its motion to dismiss.

GENERAL OBJECTIONS

1. Defendant objects to the Interrogatories and the Document Requests to the extent that they seek confidential, diplomatic, or other sensitive information. To the extent Defendant agrees to produce any information, it agrees to do so only pursuant to the protective order dated December 30, 2003, agreed to by the parties and "so ordered" by the Court.

2. Defendant objects to the Interrogatories and the Document Requests to the extent that they violate Article 24 of the Vienna Convention on Diplomatic Relations, *done* Apr. 18, 1961, 23 U.S.T. 3227 ("Vienna Convention"),

which provides that "[t]he archives and documents of the mission shall be inviolable at any time and wherever they may be." *See also 767 Third Avenue Associates v. Permanent Mission of The Republic of Zaire to the United Nations,* 988 F.2d 295, 300 (2nd Cir. 1993) ("History establishes beyond question [] that the Vienna Convention on Diplomatic Relations was intended to and did provide for the inviolability of mission premises, archives, documents, and official correspondence") (citation omitted).

3. Defendant objects to the Interrogatories and the Document Requests to the extent that they go beyond the scope of the jurisdictional discovery permitted by this Court's Order dated October 7, 2003. *See* City of New York v. Permanent Mission of India to the United Nations, et al., No. 03 Civ. 3256 (RCC), Order dated October 7, 2003 (citing *First City, Texas-Houston, N.A. v. Rafidain Bank,* 150 F.3d 172 (2d Cir. 1998); *Filus v. Lot Polish Airlines,* 907 F.2d 1328 (2d Cir. 1990); *Whiteman v. Fed. Republic of Austria,* 2002 WL 31368236 (S.D.N.Y. Oct. 21, 2002); *Leutwyler v. Office of Her Majesty Queen Rania Al-Abdullah,* 184 F. Supp. 2d 277 (S.D.N.Y. 2001); *Mukaddam v. Permanent Mission of Saudi Arabia to the United Neurons,* 136 F. Supp. 2d 257 (S.D.N.Y. 2001)).

4. Defendant objects to the Interrogatories and the Document Requests to the extent they purport to impose any obligations greater than those imposed by the Federal Rules of Civil Procedure and by the Local Rules of the United States District Court for the Southern District of New York.

5. Defendant objects to the Interrogatories and the Document Requests to the extent they seek information

protected by the attorney-client privilege, the attorney work product doctrine, or any other applicable privilege.

SPECIFIC RESPONSES AND OBJECTIONS TO INTERROGATORIES

Interrogatory No. 6

Identify the individual(s), and provide his/her residency status, who have knowledge of the terms of employment and employment contracts for all individuals who were employed by the Mission of India for the period July 1991 to present.

Response to Interrogatory No. 6

Ruchira Kamboj, Counsellor and Head of Chancery posted to the Permanent Mission of India to the United Nations, has knowledge of the terms of employment for individuals employed by the Indian Mission and of the policies and procedures concerning the provision of housing to employees of the Indian Mission. The policies and procedures for provision of housing to employees of the Indian Mission are set forth in the accompanying *Handbook of Rules and Regulations Relating to the Indian Foreign Service,* which was provided to the City on January 16, 2004.

To the extent this interrogatory seeks the identity of each and every person in the world who has some knowledge of the terms of employment for individuals employed at the Indian Mission from July 1991 to the present, India objects to the interrogatory on the basis of the General Objections set forth above and on the grounds that the interrogatory is overbroad, unduly burdensome, beyond

the scope of the Court's order limiting discovery to jurisdictional issues, and not reasonably calculated to lead to discovery of admissible evidence related to jurisdiction.

SPECIFIC RESPONSES AND OBJECTIONS TO DOCUMENT REQUESTS

Document Request No. 8

Produce reports, documents, and/or correspondence concerning procedures applicable to residential housing for employees of the Mission of India for the period July 1991 to the present.

Response to Document Request No. 8

The policies and procedures for provision of housing to employees of the Indian Mission are set forth in the accompanying *Handbook of Rules and Regulations Relating to the Indian Foreign Service,* which was provided to the City on January 16, 2004. To the extent this request seeks each and every piece of paper containing a reference to such policies and procedures, India objects to this document request on the basis of the General Objections set forth above and on the grounds that the request is overbroad, unduly burdensome, beyond the scope of the Court's order limiting discovery to jurisdictional issues, and not reasonably calculated to lead to discovery of admissible evidence related to jurisdiction.

Document Request No. 10

For each tenant of record identified in response to Interrogatory No. 11 produce the employment contract, agreements, and/or terms of employment (including but

not limited to documents concerning residential rent subsidies and credits) with the Mission of India or the Indian government for the tenant of record for the period July 1991 to the present.

Response to Document Request No. 10

To the extent this request seeks documents concerning the provision of housing, rent subsidies or credits, the policies and obligations of the Government of India to its employees are set forth in the *Handbook of Rules and Regulations Relating to the Indian Foreign Service,* which was provided to the City on January 16, 2004. To the extent this request seeks employment documents unrelated to the provision of housing for diplomatic personnel identified in the Affidavit of Ruchira Kamboj, India objects to this document request on the basis of the General Objections set forth above and on the basis that it is broader than the scope of discovery permitted by Judge Maas' November 22, 2004 Memorandum Decision in this case, which specifically limited discovery to the particular uses of the property at issue in the case. India also objects to this document request on the grounds that the request is overbroad, unduly burdensome, beyond the scope of the Court's order limiting discovery to jurisdictional issues, and not reasonably calculated to lead to discovery of admissible evidence related to jurisdiction.

Document Request No. 11

For each tenant of record identified in response to Interrogatory No. 11 produce the agreement, lease, correspondence and/or documents regarding the terms and

conditions of occupancy for each residential unit of the subject property for the period July 1991 to present.

Response to Document Request No. 11

The terms and conditions of occupancy for each residential unit of the subject property are set forth in the accompanying *Handbook of Rules and Regulations Relating to the Indian Foreign Service,* which was provided to the City on January 16, 2004. India does not have possession, custody, or control of any agreements and/or leases responsive to this request and states, upon information and belief, that no such documents exist.

To the extent this request seeks each and every piece of paper containing a reference to such terms and conditions, India objects to this document request on the basis of the General Objections set forth above and on the basis that it is broader than the scope of discovery permitted by Judge Maas' November 22, 2004 Memorandum Decision in this case, which specifically limited discovery to the particular uses of the property at issue in the case. India also objects to this document request on the grounds that the request is overbroad, unduly burdensome, beyond the scope of the Court's order limiting discovery to jurisdictional issues, and not reasonably calculated to lead to discovery of admissible evidence related to jurisdiction.

Document Request No. 12

Produce all records, reports, and/or documents maintained by the Mission of India regarding occupants other than tenants of record and/or Mission of India employees at the subject parcel for the period July 1991 to present.

Response to Document Request No. 12

The names, titles, immigration and diplomatic status, and dates of occupancy of each tenant of record is set forth in Exhibit A of the accompanying affidavit of Ruchira Kamboj, Counsellor and Head of Chancery posted to the Permanent Mission of India to the United Nations, which was provided to the City on January 16, 2004. The only occupants other than the tenants of record listed in Exhibit A for the period July 1991 to present have been immediate family members of the tenants of record.

To the extent this request seeks each and every piece of paper containing a reference to tenants of record or their families, India objects to this document request on the basis of the General Objections set forth above and on the grounds that the request is overbroad, unduly burdensome, beyond the scope of the Court's order limiting discovery to jurisdictional issues, and not reasonably calculated to lead to discovery of admissible evidence related to jurisdiction.

Document Request No. 14

Produce all reports, documents, and/or other correspondence prepared by the Mission of India filed with or submitted to the Ministry of Foreign Affairs of the Indian Government regarding residential housing for employees of the Mission of India for the period July 1991 to present.

Response to Document Request No. 14

The names, titles, immigration and diplomatic status, and dates of occupancy of each tenant of record is set forth

in Exhibit A of the accompanying affidavit of Ruchira Kamboj, Counsellor and Head of Chancery posted to the Permanent Mission of India to the United Nations, which was provided to the City on January 16, 2004. To the extent this request seeks additional documents concerning tenants of record or their families, or documents concerning employees of the Indian Mission other than those residing at the subject property, India objects to this document request on the basis of the General Objections set forth above and on the grounds that the request is overbroad, unduly burdensome, beyond the scope of the Court's order limiting discovery to jurisdictional issues, and not reasonably calculated to lead to discovery of admissible evidence related to jurisdiction.

Document Request No. 15

For occupants other than tenants of record or Mission of India employees identified in response to Interrogatory No. 12, produce the agreement, lease, correspondence and/or document regarding terms and condition of occupancy of the residential unit in the subject parcel for the period July 1991 to present.

Response to Document Request No. 15

India does not have possession, custody, or control of any documents responsive to this request and states, upon information and belief, that no such documents exist.

Dated: New York, New York
December 22, 2004

KAYE SCHOLER LLP

By: /s/ Robert A. Kandel
Robert A. Kandel (RK-6120)
John J.P. Howley (JH-9764)
Robert Negron, Jr. (RN-0276)
Attorneys for Defendant
425 Park Avenue
New York, New York 10022
(212) 836-8000

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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THE CITY OF NEW YORK,

Plaintiff,

-against-

No. 03 CV 6086 RCC

THE BAYARYN JARGALSAIKHAN, AS PRINCIPAL RESIDENT REPRESENTATIVE TO THE UNITED NATIONS OF THE MONGOLIAN PEOPLE'S REPUBLIC, et al.,

AFFIRMATION OF ROBERT NEGRON, JR.

Defendants.

---------- X

ROBERT NEGRON, JR., under penalty of perjury, affirms and says:

1. I am an associate with the law firm of Kaye Scholer LLP, counsel for defendant The Bayaryn Jargalsaikhan, as Principal Resident Representative to the United Nations of the Mongolian People's Republic in this action, and am personally familiar with the matters set forth herein.

2. I submit this affirmation in support of Defendants' Motion To Dismiss The Amended Complaint For Lack Of Subject Matter Jurisdiction.

3. Attached hereto as Exhibits A-C are copies of documents cited in Defendant's Memorandum Of Law In Support Of Its Motion To Dismiss The Amended Complaint For Lack Of Subject Matter Jurisdiction:

Document	Ex.
Plaintiff's Amended Complaint	A
Affidavit of Gansukh Purevjav	B
Mongolia's Second Supplemental Response To Plaintiff's First Set Of Interrogatories And First Request For The Production Of Documents For The Purpose Of Jurisdictional Discovery	C

Dated: New York, New York
January 10, 2005

KAYE SCHOLER LLP

By: /s/ Robert Negron, Jr.
Robert A. Kandel (RK-6120)
John J.P. Howley (JH-9764)
Robert Negron, Jr. (RN-0276)
Attorneys for Defendant
425 Park Avenue
New York, New York 10022
(212) 836-8000

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---------- x

THE CITY OF NEW YORK,

Plaintiff,

-against-

THE BAYARYN JARGAL-SAIKHAN, AS PRINCIPAL RESIDENT REPRESENTATIVE TO THE UNITED NATIONS OF THE MONGOLIAN PEOPLE'S REPUBLIC, et al.,

Defendants.

---------- x

No. 03 CV 6086 RCC

AFFIDAVIT OF GANSUKH PUREVJAV IN SUPPORT OF MOTION TO DISMISS

GANSUKH PUREVJAV, being duly sworn, deposes and says:

1. I am an employee of the Ministry for Foreign Affairs of the People's Republic of Mongolia (the "Foreign Ministry") serving as the Deputy Permanent Representative to the United Nations as well as Consular Agent. I am personally familiar with the matters set forth herein.

2. My office is located within the Mongolian Mission, 6 East 77th Street, New York, as is my residence which I share with my family. My colleagues, the Ambassador-Permanent Representative, the Councellor, the Third Secretary, the Attache and the administrative officer/driver, likewise have their respective offices and their residences within the Mission.

3. The "Occupancy and Visa History 1980-2004," attached hereto as Exhibit A, shows that since 1980 all persons who have resided in the Mission have been or currently are employees of the Foreign Ministry or members of their families and that the employees held G-1 visas with the exception of the administrative officer/driver who held a G-2 visa. The United States Department of State issues G-1 and G-2 visas to employees of foreign governments assigned to the United Nations.

4. The Foreign Ministry, for its convenience, provides housing within the Mission to its employees posted to the United Nations including the Ambassador- Permanent Representative and the Deputy Permanent Representative, for several key reasons, among others. First, given the time difference between the Mission in New York and the Foreign Ministry in Ulan Bator, Mongolia, the diplomats at the Mission must be available, day and night, to address inquiries and communications from the Foreign Ministry as well as to transmit reports about developments at the United Nations to the Foreign Ministry. Second, the housing of personnel within the Mission fosters a greater concentration of attention by the diplomats and staff on matters pertinent to the Foreign Ministry. Third, having all personnel living within the Mission facilitates providing security to all concerned. Fourth, the provision of housing at the Mission facilitates a more efficient transition between incoming and outgoing diplomats and staff and their families by simplifying the logistics of relocating to the United States from Mongolia. Fifth, given the small Mongolian community within metropolitan New York, the importance of providing the diplomats, the staff and their respective families greater

access to a Mongolian community and Mongolian culture cannot be underestimated.

5. Housing within the Mission is provided to the government employees, including diplomats, administrative officers and members of their families quartered there, without payment by them of any rent or fees; nor is the provision of such housing considered compensation to such employees. The cost of this housing is paid for entirely by the Government of Mongolia for the manifold reasons noted above and in accordance with the relevant decisions, orders and regulations noted below.

6. Since October 5, 2000, the Mongolian Law on Diplomatic Service, and the regulations and orders promulgated and approved thereunder by the Minister for Foreign Affairs and the Minister for Finance and Economy, has required the Government of Mongolia to provide housing free of charge to its employees posted to its missions abroad including the Permanent Mission to the United Nations. Prior to the enactment of that law by the Mongolian Parliament, issues related to the salaries, housing, transportation and other assistance to be provided to diplomats and other employees of the Foreign Ministry posted abroad were governed by the relevant decisions of the Government of Mongolia, such as Government decision No. 41 dated January 26, 1990. The decisions themselves were restated and codified as national law by the Mongolian Parliament in October 2000, as noted.

/s/ [Illegible]
GANSUKH PUREVJAV

Dated: New York, New York
January 12, 2004

Sworn to before me on this 12 day
of January 2004.

/s/ Robert A. Kandel
Notary Public

ROBERT A. KANDEL
Notary Public, State of New York
No. 02KA4521595
Qualified in Westchester County
Commission Expires June 30, 2006

Attachments:

Exhibit A - Occupancy and Visa History 1980-2004

Permanent Mission of Mongolia to the United Nations
Occupancy and Staff Members VISA History
(1980-2004)

Years	Ambassador's Apartment (3rd Floor)	Apartment # 2 (4th Floor)	Apartment # 3 (4th Floor)	Apartment # 4 (5th Floor)	Apartment # 5 (5th Floor)	Apartment # 6 (6th Floor)
1980	H.E.Mr.B.Dashtseren Ambassador, PR 1978-1982 G-1	Mr.L.Erdenechuluun 1st Secretary 1980-1984 G-1	Mr.J.Enkhsaikhan 1st Secretary 1979-1980 G-1	Mr.Ch.Bold 2nd Secretary 1980-1983 G-1	Mr.V.Teegee Attache 1977-1981 G-1	Mr.R.Dugersuren Admin.Officer/ Driver 1979-1981 G-2
1981					Mr.G.Erdembat Attache 1981-1985 G-1	Mr.Kh.Sengee Admin.Officer/ Driver 1981-1986 G-2
1982	H.E.Mr.Ts.Narkhuu Ambassador, PR 1982-1983 G-1					
1983						
1984	H.E.Mr.G.Nyamdoo Ambassador, PR 1984-1988 G-1	Mr.B.Dolgorsuren Deputy PR 1984-1990 G-1				
1985				Mr.J.Gankhuyag Attache 1985-1989 G-1		
1986						Mr.Sh.Dagiisuren Admin.Officer/ Driver 1986-1990 G-2
1987			Mr.R.Mounkhou 3rd Secretary 1987-1991 G-1		Mr.Ts.Achitsaikhan 1st Secretary 1987-1991 G-1	
1988	H.E.Mr.M.Dugersuren Ambassador, PR 1988-1991 G-1					
1989				Mr.T.BatchuUun Attache 1989-1992 G-1		
1990		Mr.L.Erdenechuluun Deputy PR 1990 G-1				Mr.B.Bayarjargal Admin.Officer/ Driver1990-1993 G-2
1991	H.E.Mr.L.Erdenechuluun Ambassador, Acting PR, 1991 G-1		Mr.G.Enkhbold 3rd Secretary 1991-1993 G-1		Mr.Ts.Munkh-Orgil 3rd Secretary 1991-1995 G-1	
1992	H.E.Mr.L.Erdenechuluun Ambassador, PR 1992-1996 G-1	Ms.O.Enkhtsetseg 1st Secretary, Counselor 1992-1997 G-1		Mrs.Ts.Nyamsuren Attache 1992-1993 G-1		
1993			Mr.J.Sukhee 2nd Secretary 1993-1995 G-1			Mr.Ts.Gankhuyag Admin.Officer/ Driver 1993-1997 G-2
1994						

Exhibit A

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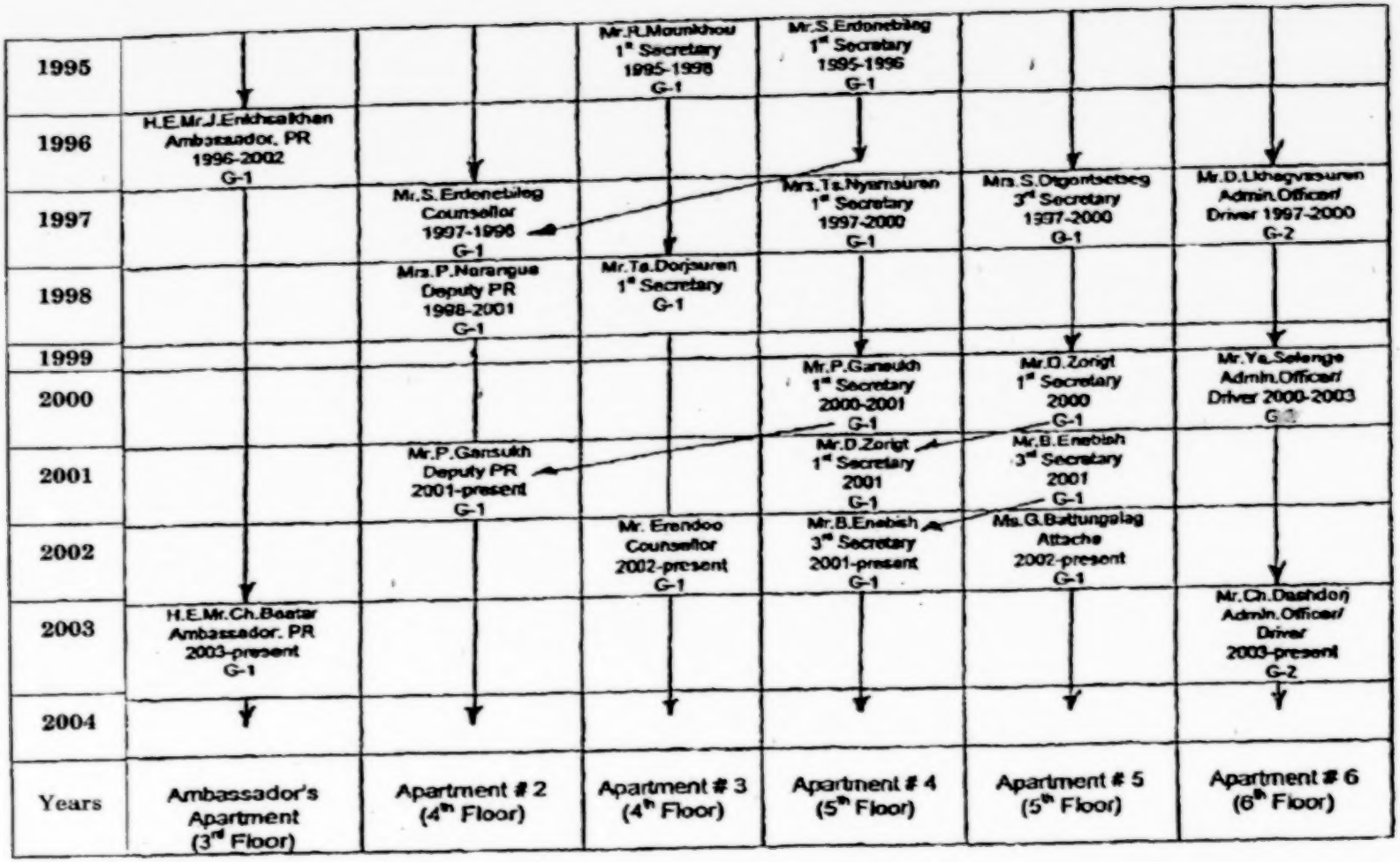
1995
1996
1997
1998
1999
2000
2001
2002
2003
2004
Years
H.E.Mr.J.Enkhsaikhan
Ambassador, PR
1996-2002
G-1
H.E.Mr.Ch.Baatar
Ambassador, PR
2003-present
G-1
Ambassador's Apartment (3rd Floor)
Mr.S.Erdenebileg
Counsellor
1997-1998
G-1
Mrs.P.Narangua
Deputy PR
1998-2001
G-1
Mr.P.Gansukh
Deputy PR
2001-present
G-1
Apartment # 2 (4th Floor)
Mr.R.Maunkhou
1st Secretary
1995-1998
G-1
Mr.Ts.Dorjsuren
1st Secretary
G-1
Mr. Erendoo
Counsellor
2002-present
G-1
Apartment # 3 (4th Floor)
Mr.S.Erdenebileg
1st Secretary
1995-1996
G-1
Mrs.Ts.Nyamsuren
1st Secretary
1997-2000
G-1
Mr.P.Gansukh
1st Secretary
2000-2001
G-1
Mr.D.Zorigt
1st Secretary
2001
G-1
Mr.B.Enebish
3rd Secretary
2001-present
G-1
Apartment # 4 (5th Floor)
Mrs.S.Oigontsetseg
3rd Secretary
1997-2000
G-1
Mr.D.Zorigt
1st Secretary
2000
G-1
Mr.B.Enebish
3rd Secretary
2001
G-1
Ms.G.Battungalag
Attache
2002-present
G-1
Apartment # 5 (5th Floor)
Mr.D.Lkhagvasuren
Admin.Officer/
Driver 1997-2000
G-2
Mr.Ya.Selenge
Admin.Officer/
Driver 2000-2003
G-2
Mr.Ch.Dashdon
Admin.Officer/
Driver
2003-present
G-2
Apartment # 6 (6th Floor)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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THE CITY OF NEW YORK,

Plaintiff,

-against-

THE BAYARYN JARGAL-SAIKHAN, AS PRINCIPAL RESIDENT REPRESENTATIVE TO THE UNITED NATIONS OF THE MONGOLIAN PEOPLE'S REPUBLIC, and "JANE DOE #1" through "JANE DOE #20", the names of the last 20 defendants being unknown to plaintiff, the persons or parties intended to be, persons or corporations, if any, having or claiming an interest in or lien upon the property described in the complaint,

Defendants.

---------- x

No. 03 CV 6086 RCC (FM)

USM5w
SDNY

MONGOLIA'S SECOND SUPPLEMENTAL RESPONSES TO PLAINTIFF'S FIRST SET OF INTERROGATORIES AND FIRST REQUEST FOR THE PRODUCTION OF DOCUMENTS FOR THE PURPOSE OF JURISDICTIONAL DISCOVERY

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, defendant The Bayaryn Jargalsaikhan, as

Principal Resident Representative to the United Nations of the Mongolian People's Republic, and the Jane Doe defendants (collectively "Mongolia"), by its attorneys Kaye Scholer LLP, hereby further responds to Plaintiff The City of New York's First Set of Interrogatories (the "Interrogatories") and First Request for the Production of Documents for the Purpose of Jurisdictional Discovery (the "Document Requests") as follows:

PRELIMINARY STATEMENT

Mongolia submits this second supplemental response in an effort to resolve all remaining discovery issues concerning jurisdiction so that the Court may decide the motion to dismiss on sovereign immunity and jurisdictional grounds that has been pending since January 16, 2004. In this regard, Mongolia notes that the City has had since January 16, 2004 a complete list of the names, titles, visa and diplomatic status, and dates of occupancy of each tenant of record in the Permanent Mission of Mongolia to the United Nations (the "Mongolian Mission"), and that since that date the City has also had a sworn affidavit setting forth the policies and procedures by which Mongolia provides such housing, without charge, to those tenants of record. While Mongolia believes that no further information is required to decide the jurisdictional and sovereign immunity issues – and while the City has not described how any additional information would be necessary to decide the jurisdictional and sovereign immunity issues – Mongolia submits this supplemental discovery response solely in the interest of avoiding further delay to the resolution of the motion to dismiss.

GENERAL OBJECTIONS

1. Defendants object to the Interrogatories and the Document Requests to the extent they seek confidential, diplomatic, or other sensitive information. To the extent Defendants agree to produce any information, they agree to do so only pursuant to the protective order dated December 30, 2003, agreed to by the parties and "so ordered" by the Court.

2. Defendants object to the Interrogatories and the Document Requests to the extent they violate Article 24 of the Vienna Convention on Diplomatic Relations, *done* Apr. 18, 1961, 23 U.S.T. 3227 ("Vienna Convention"), which provides that "[t]he archives and documents of the mission shall be inviolable at any time and wherever they may be." *See also 767 Third Avenue Associates v. Permanent Mission of The Republic of Zaire to the United Nations*, 988 F.2d 295, 300 (2nd Cir. 1993) ("History establishes beyond question [] that the Vienna Convention on Diplomatic Relations was intended to and did provide for the inviolability of mission premises, archives, documents, and official correspondence") (citation omitted).

3. Defendants object to the Interrogatories and the Document Requests to the extent they go beyond the scope of the jurisdictional discovery permitted by this Court's Order dated October 7, 2003. *See City of New York v. The Bayaryn Jargalsaikhan, as Principal Resident Representative to the United Nations of the Mongolian People's Republic, et al.*, No. 03 Civ. 6086 (RCC), Order dated October 7,2003 (citing *First City, Texas-Houston, N.A. v. Rafidain Bank*, 150 F.3d 172 (2d Cir. 1998); *Filus v. Lot Polish Airlines*, 907 F.2d 1328 (2d Cir. 1990), *Whiteman v. Fed. Republic of Austria*, 2002 WL 31368236 (S.D.N.Y. Oct. 21,

2002); *Leutwyler v. Office of Her Majesty Queen Rania Al-Abdullah*, 184 F.Supp.2d 277 (S.D.N.Y. 2001); *Mukaddam v. Permanent Mission of Saudi Arabia to the United Nations*, 136 F. Supp. 2d 257 (S.D.N.Y. 2001)).

4. Defendants object to the Interrogatories and the Document Requests to the extent they purport to impose any obligations greater than those imposed by the Federal Rules of Civil Procedure and by the Local Rules of the United States District Court for the Southern District of New York.

5. Defendants object to the Interrogatories and the Document Requests to the extent they seek information protected by the attorney-client privilege, the attorney work product doctrine, or any other applicable privilege.

SPECIFIC RESPONSES TO INTERROGATORIES

Interrogatory No. 6

Identify the individual(s), and provide his/her residency status, who have knowledge of the terms of employment and employment contracts for all individuals who were employed by the Mongolian Mission for the years 1980 to present.

Response to Interrogatory No. 6

The Honorable Gansukh Purevjav, former Deputy Permanent Representative of the Mongolian Mission to the United Nations and currently Deputy Director General of the Multilateral Relations Department within the Ministry for Foreign Affairs, has knowledge of the policies and procedures concerning the provision of housing to employees of the Foreign Ministry including those who

work and reside in the Mongolian Mission. The policies and procedures for provision of housing to employees of the Mongolian Mission are set forth in the accompanying affidavit of Mr. Gansukh, which was provided to the City on January 16, 2004 (the "Affidavit of the Honorable Gansukh Purevjav") (Exhibit A). Mongolia is not aware that any individuals have knowledge of "employment contracts for all individuals who were employed by the Mongolian Mission for the years 1980 to present."

To the extent this interrogatory seeks the identity of each and every person in the world who has some knowledge of the terms of employment for individuals employed at the Mongolian Mission from 1980 to the present, Mongolia objects to the interrogatory on the basis of the General Objections set forth above and on the grounds that the interrogatory is overbroad, unduly burdensome, beyond the scope of the Court's order limiting discovery to jurisdictional issues, and not reasonably calculated to lead to discovery of admissible evidence related to jurisdiction.

Interrogatory No. 14

Identify the location of documents, reports and/or correspondence of the Mongolian Mission filed with or sent to the Ministry of Foreign Affairs of the Mongolian government, regarding the residential units in the subject parcel for the period 1980 to present.

Response to Interrogatory No. 14

To the extent any such documents exist, they are located in the archives of the Permanent Mission of the Mongolian People's Republic to the United Nations.

SPECIFIC RESPONSES TO DOCUMENT REQUESTS

Document Request No. 7

Produce the employment manual, and any additions, modifications and updates thereto, applicable to employees of the Mongolian Mission who resided within the residential units of the subject parcel from 1980 to the present.

Response to Document Request No. 7

Mongolia does not have possession, custody, or control of any documents responsive to this request and states, upon information and belief, that no such documents exist.

Document Request No. 8

Produce reports, documents and/or correspondence concerning procedures applicable to residential housing for employees of the Mongolian Mission for the period 1980 to the present.

Response to Document Request No. 8

The policies and procedures for provision of housing to employees of the Mongolian Mission are set forth in the Affidavit of the Honorable Gansukh Purevjav, Exhibit A hereto, which was provided to the City on January 16, 2004. As stated in that affidavit, since October 5, 2000 the *Mongolian Law on Diplomatic Service,* and the regulations and orders promulgated and approved thereunder by the Minister for Foreign Affairs and the Minister for Finance and Economy, has governed the provision of housing free of charge to employees of the Government of Mongolia posted to its missions abroad including the Mongolian

Mission. An official English translation of the *Mongolian Law on Diplomatic Service* is attached hereto as Exhibit B. Prior to the enactment of that law by the Mongolian Parliament, issues related to the salaries, housing and other assistance to be provided to diplomats and other employees of the Foreign Ministry posted abroad were governed by the relevant decisions of the Government of Mongolia. A copy of Government decision No. 41, dated January 26, 1990, is attached hereto as Exhibit C together with an unofficial translation of that portion of the decision that addresses the housing of the members of diplomatic missions. To the extent this request seeks each and every piece of paper containing a reference to such policies and procedures, Mongolia objects to this document request on the basis of the General Objections set forth above and on the grounds that the request is overbroad, unduly burdensome, beyond the scope of the Court's order limiting discovery to jurisdictional issues, and not reasonably calculated to lead to discovery of admissible evidence related to jurisdiction.

Document Request No. 10

For each tenant of record identified in response to Interrogatory No. 11 produce the employment contract, agreements and/or terms of employment (including but not limited to documents concerning residential rent subsidies and credits) with the Mongolian Mission or the Mongolian government for the tenant of record for the period 1980 to the present.

Response to Document Request No. 10

To the extent this request seeks documents concerning the provision of housing, rent subsidies or credits, the policies and obligations of the Government of Mongolia to its employees is set forth in the *Mongolian Law on Diplomatic Service,* Exhibit B hereto, and in Government decision No. 41, Exhibit C hereto. To the extent this request seeks employment documents for diplomatic personnel identified in the Affidavit of the Honorable Gansukh Purevjav, Mongolia objects to this document request on the basis of the General Objections set forth above. Mongolia also objects to this document request on the grounds that the request is overbroad, unduly burdensome, beyond the scope of the Court's order limiting discovery to jurisdictional issues, and not reasonably calculated to lead to discovery of admissible evidence related to jurisdiction.

Document Request No. 11

For each tenant of record identified in response to Interrogatory No. 11 produce the agreement, lease, correspondence and/or documents regarding the terms and conditions of occupancy of the tenant in each residential unit of the subject property for the period 1980 to present.

Response to Document Request No. 11

Mongolia does not have possession, custody, or control of any documents responsive to this request and states, upon information and belief, that no such documents exist with the exception of the *Mongolian Law on Diplomatic Service,* Exhibit B hereto, and Government decision No. 41, Exhibit C hereto.

Document Request No. 12

Produce all records, reports, and/or documents maintained by the Mongolian Mission regarding tenants of record and/or occupants other than tenants of record and Mongolian Mission employees at the subject parcel for the period 1980 to the present.

Response to Document Request No. 12

The names, titles, immigration and diplomatic status, and dates of occupancy of each tenant of record is set forth on Exhibit A to the accompanying Affidavit of the Honorable Gansukh Purevjav, which was provided to the City on January 16, 2004. To the extent this request seeks each and every piece of paper containing a reference to tenants of record or their families, Mongolia objects to this document request on the basis of the General Objections set forth above and on the grounds that the request is overbroad, unduly burdensome, beyond the scope of the Court's order limiting discovery to jurisdictional issues, and not reasonably calculated to lead to discovery of admissible evidence related to jurisdiction.

Document Request No. 14

Produce all reports, documents, other correspondence prepared by the Mongolian Mission filed with or submitted to the Ministry of Foreign Affairs of the Mongolian Government regarding residential housing for employees of the Mongolian Mission for the period 1980 to the present.

Response to Document Request No. 14

The names, titles, immigration and diplomatic status, and dates of occupancy of each tenant of record is set forth on Exhibit A of the accompanying Affidavit of the Honorable Gansukh Purevjav, which was provided to the City on January 16, 2004. To the extent this request seeks additional documents concerning tenants of record or their families, Mongolia objects to this document request on the basis of the General Objections set forth above and on the grounds that the request is overbroad, unduly burdensome, beyond the scope of the Court's order limiting discovery to jurisdictional issues, and not reasonably calculated to lead to discovery of admissible evidence related to jurisdiction.

Document Request No. 15

For occupants other than tenants of record and Mongolian Mission employees identified in response to Interrogatory No. 12, produce the agreement, lease, correspondence and/or document regarding terms and condition of occupancy of the residential unit in the subject parcel for the period 1980 to the present.

Response to Document Request No. 15

Mongolia does not have possession, custody, or control of any documents responsive to this request and states, upon information and belief, that no such documents exist.

Dated: New York, New York
November 17, 2004

KAYE SCHOLER LLP

By: /s/ Robert A. Kandel

Robert A. Kandel (RK-6120)
John J.P. Howley (JH-9764)
Robert Negron, Jr. (RN-0276)
Attorneys for Defendants
425 Park Avenue
New York, New York 10022
(212) 836-8000

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---------- x

THE CITY OF NEW YORK,

Plaintiff,

-against-

THE PERMANENT MISSION OF INDIA TO THE UNITED NATIONS, et al.,

Defendants.

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DECLARATION OF JOHN R. LOW-BEER IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS

No. 03 CV 3256 (RCC)

JOHN R. LOW-BEER declares under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct:

1. I am an Assistant Corporation Counsel in the office of Michael A. Cardozo, Corporation Counsel of the City of New York, attorney for plaintiff.

2. I submit this Declaration in opposition to defendant's motion to dismiss for lack of subject matter jurisdiction.

3. Attached hereto as Exhibits A-D are copies of documents cited in Plaintiff's Memorandum Of Law In Opposition To Defendant's Motion To Dismiss:

Document	**Ex.**
U.S. Dept. of State, *Guidance for Administrative Officers* § 7.8 (Jan. 4, 2004) (downloaded Feb. 1, 2005 from http://www.state.gov/documents/organization/27910.pdf)	A

Diplomatic Note HC-06-93 (Feb. 17, 1993)	B
Diplomatic Note HC-18-93 (Apr. 14, 1993)	C
Diplomatic Note HC-12-01 (Apr. 5, 2001)	D

Dated: New York, New York
February 7, 2005

/s/ John R. Low-Beer
JOHN R. LOW-BEER
(JL 3755)

United States Department of State

[LOGO]

FOREIGN DIPLOMATIC AND CONSULAR PERSONNEL IN THE UNITED STATES

Guidance for Administrative Officers

This is the first revision of ***Guidance for Administrative Officers*** which superseded the publication, ***Handbook for Diplomatic and Career Consular Personnel in the United States***, Department of State Publication 9886.

DEPARTMENT OF STATE PUBLICATION 10576
Office of Foreign Missions
and the
Office of Protocol
December 2003

Foreword

This publication is intended primarily for the use of the administrative officer at a diplomatic or consular mission, or international organization who traditionally is involved in assisting the mission's personnel and family members during their stay in the United States in obtaining services from the Department of State. The responsibilities for the administration of relations between the United States and foreign missions are divided between the Office of Protocol and the Office of Foreign Missions. ***Guidance for Administrative Officers*** provides summary guidance on obtaining services from each office.

We anticipate there will be changes to this electronic publication whenever significant changes in policy or procedure occur. These changes will be announced on the Office of Foreign Missions home page (http://www.state.gov/ofm), and hyperlinks to them will be provided.

This edition of ***Guidance for Administrative Officers*** is available only in electronic format.

Comments and inquiries regarding this publication should be directed to (202) 895-3544 or OFMinfo@state.gov.

Section 7 – Real Property Transactions and Property Tax Exemptions

The Office of Foreign Missions (OFM) reviews and controls the acquisition of real property in the United States by foreign missions and international organizations in accordance with the Foreign Missions Act.

This section provides general information and guidelines to assist foreign governments in complying with federal laws when they acquire diplomatic and consular property in the United States and its territories.

7.1 Chancery Location

All properties meant for use as a chancery or chancery annex are traditionally located in the District of Columbia, the Department will consider other locations in the Washington Metropolitan Area on a case-by-case basis.

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7.2 Locating New Property

Foreign governments should identify their needs as to location, space, security, and future expansion. A competent real estate agent/broker familiar with zoning regulations and areas suitable for the location of chancery offices should be contacted to assist in finding an available property.

7.3 Notifying the Office of Foreign Missions

All foreign missions are required to inform OFM by diplomatic note ***before*** the purchase, lease, or sale of real estate in the United States, as well as alterations or additions to existing premises. Under U.S. law, all such transactions are subject to disapproval by the Department. Consular posts have the option of notifying the appropriate OFM regional office by letter rather than by diplomatic note through their mission in Washington.

Diplomatic notes and all correspondence relating to real estate transactions and property tax exemption should be sent to:

Office of Foreign Missions
Real Property Section,
Room 2238
Office of Foreign Missions
U.S. Department of State
2201 C Street, N.W.
Washington, DC 20520
Telephone number (202) 647-4554

Also, please fax copies of all such correspondence to (202) 647-1919.

Consular posts may address correspondence on property related issues to the appropriate OFM regional office.

Although OFM has 60 days following the receipt of such notification in which to respond, a response to most requests will be made within 10 working days.

7.4 Locations and Zoning

In the District of Columbia, chanceries or chancery annexes may be located, replaced, or expanded in both "matter of right" areas and "non-matter of right" areas. "Matter of right" areas are zoned commercial (C), industrial (CM and M), waterfront (W), or mixed-use (CR); "non-matter of right" areas include zoned special-purpose (SP) and certain residential areas (R) in the special diplomatic overlay zone. For chanceries located outside the District of Columbia, a mission must comply with the zoning and land use laws applicable in the local jurisdiction.

As a general matter chanceries may be located in "non-matter of right" areas ***only*** after a review by the Foreign Missions Board of Zoning Adjustment (BZA), set up under the Foreign Missions Act to review the location of chanceries in certain areas of the District of

Columbia. The BZA process includes a public hearing. All missions which appear before the Board should have legal representation. A BZA review may also be required if an expansion or renovation of existing chancery properties is required.

A BZA review is generally not necessary for occupancy of properties located in "matter of right" areas. However, the mission is required to obtain an Occupancy Permit from the government of the District of Columbia (accomplished with the assistance of OFM).

The complexity of the zoning process with regard to the purchase or lease of chanceries or chancery annexes requires missions to work closely with OFM ***before*** committing substantial time or financial resources to a chancery project.

Properties intended solely for residential use may be located throughout the Washington metropolitan area. Authorization from OFM is required and, if construction or renovation is considered, the necessary local jurisdiction's permits and certificates must be obtained.

7.5	Occupancy Permits	A "Certificate of Occupancy" permit must be obtained from the Government of the District of Columbia before occupying office space for chancery use.
7.6	Procedures for Missions to the UN	Missions to the United Nations (UN) follow similar procedures when requesting approval to acquire official property for their office or residential use. UN missions should submit requests to the OFM New York Regional Office.
7.7	To Acquire Property Outside Washington, DC	Foreign missions are required to obtain prior authorization from OFM before acquiring property for use as consular offices and residences. Missions should be aware that property acquired for use as consular office space is subject to the zoning laws and regulations of the local jurisdiction where the property is located. Information regarding local jurisdictional regulations and real estate taxes may be obtained from local authorities or from the OFM regional office which services that area.
7.8	Real Estate Tax Exemption Program	In accordance with the Vienna Convention on Diplomatic Relations (VCDR) and the Vienna Convention on Consular Relations (VCCR), property held in the name of a foreign government for use as its chancery, chancery annexes,

consulates, or as the residence of the chief of mission or the career head of a consular post enjoys exemption from all national, regional, and municipal dues and taxes. In 1987, exemption from dues and taxes was extended on a reciprocal basis to other foreign government-owned residences used to house members of diplomatic missions in the Washington metropolitan area.

Absent a bilateral agreement, property tax exemption is not generally granted to residences owned by foreign governments used to house members of consular posts or international organizations, except, as noted above, for career heads of the consular posts or chiefs of missions to the international organizations.

In the Washington metropolitan area, property tax exemption is obtained through OFM. When a mission submits a request for exemption from real estate taxes, the diplomatic note should include the address of the property, its lot and square number, a description of the property's function, and the date the deed was recorded with the local government. In order to qualify for exemption from real estate taxes, the deed must be titled in the name of the mission with ***one*** exception: when the chief

of mission resides in his personally owned residence. Otherwise, personally owned residences do not enjoy tax exemption.

In New York City, property tax exemption is filed directly with the New York City Department of Fi nance Exemption Unit. The OFM New York Regional Office can provide more detailed information.

The missions are reminded that exemption from real estate taxes ***does not include exemption from charges for services*** such as the collection of refuse or any other separately identified charges for specific commodities or services that may appear on the tax bill.

7.9 Transfer and Recordation Tax Exemption for Properties in the Washington Metropolitan Area (except Montgomery County, Maryland – see section 7.10)

On the basis of the VCDR and reciprocity, OFM will request exemption from transfer and recordation taxes associated with the purchase or sale of property in the Washington Metropolitan Area. The procedures for obtaining such exemptions vary in the three jurisdictions (District of Columbia, Virginia, and Maryland).

Transfer taxes are normally the responsibility of the seller and recordation taxes the responsibility of the buyer. The governments of the areas listed above will exempt a mission from payment of the recordation tax where the mission is purchasing property and payment

of the transfer tax where the mission is selling its property. The mission should request such an exemption through OFM before the settlement date of the purchase. OFM will prepare a letter supporting exemption which should be submitted at the time of settlement.

7.10 Montgomery County, Maryland one-time Tax Exemption

Although missions are also entitled to exemption from transfer and recordation taxes in the state of Maryland which they otherwise would be obligated to pay, the procedures are more complicated than in the District of Columbia. When a foreign mission is a purchaser of property located in Montgomery County, Maryland, the mission is entitled to exemption from one hundred percent (100%) of the County Transfer Tax and fifty percent (50%) of the Maryland State Transfer Tax. In contrast, when a foreign mission is selling property it owns in Montgomery County, Maryland, it will obtain no exemption from the County Transfer Tax, and will obtain exemption from fifty percent (50%) of the Maryland Transfer Tax. Missions should prepare their purchase and sale contracts accordingly. If additional information is required, missions may contact the Real Estate Office of OFM.

7.11 Applying for Annually Recurring Property Tax Exemption

After settlement a foreign mission may also request exemption from property taxes. If OFM determines that exemption is appropriate, it will submit a request for exemption directly to the taxing authority in the District of Columbia, Maryland, and Virginia. In the District of Columbia, the mission must complete a "Foreign Government Information Request Form" and include it with the written request for tax exemption submitted to OFM. OFM will complete the reverse of the form before transmitting it (with a cover letter) to the DC Department of Finance and Revenue. The effective date of the real estate tax exemption is determined by the date the deed to the property is recorded with the DC Recorder of Deeds.

UNITED STATES MISSION
TO THE UNITED NATIONS

February 17, 1993

HC-06-93

The United States Mission to the United Nations presents its compliments to the Permanent Mission of India to the United Nations and has the honor to inform the latter that the Office of Foreign Missions has no objection to the relocation of the Permanent Mission to the building owned by the Government of India at 235 East 43rd Street in New York City.

The United States Mission is concerned, however, that the new space was occupied while the Department of State was reviewing the Permanent Mission's note of January 6, 1993, and before the expiration of sixty days as required by the Foreign Missions Act. As the Permanent Mission of India is aware, such action is a violation of United States law (Title 22, United States Code, Section 4305) and the policies of the Department of State.

The Mission is informed that the physical arrangements in the building should insure the separate and distinct status of the Permanent Mission and each of the mission or consular [illegible], as these entities enjoy a distinct legal status and, consequently, a different level of privileges and immunities under international and United States law. External and internal signs should clearly indicate the different premises.

The Mission is reminded, that exemption from property taxes is available only for that portion of the building used to house the Permanent Mission, which the United States Mission understands will occupy the first four

floors of the building, and the residences of the Permanent Representative and the Consul General. The remainder of the building (including common areas such as lobbies, common corridors and stairwells, parking spaces, and common basement) will be subject to New York City property taxes. Therefore, the Mission is encouraged to work with the City of New York to allocate the taxable and non-taxable portions of the structure and settle other outstanding tax issues relating to the property.

The Permanent Mission is further reminded that physical inviolability will extend only to the premises of the Permanent Mission and residences of the diplomatic members of the Permanent Mission. All other residences and areas, including common areas, lack such protected legal status.

Should the Government of India intend to use the building for purposes other than for the Permanent Mission and residences of members of the Permanent Mission and consular post, advance notification to the United States Mission of the proposed change would be required.

The United States Mission to the United Nations avails itself of this opportunity to renew to the Permanent Mission of the India to the United Nations the assurances of its highest consideration.

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HC:RCMoller [/s/ R]
L:CLWWillson [/s/ CW]

2/17/93

cc: Subject/Chron/Board
HMAllen
Reference
OFH/NY
IO/UNP-Boesel (via pouch)

UNITED STATES MISSION
TO THE UNITED NATIONS

April 14, 1993

HC-18-93

The United States Mission to the United Nations presents its compliments to the Permanent Missions and Offices of the Permanent Observers to the United Nations and has the honor to restate polices and procedures regarding the application of the Foreign Missions Act (Title of Public Law 97-241, 22 United States Code 4301 et seq.) to real property of foreign Missions in the United States. The subject was last brought to the attention of the Permanent Missions and the offices of the Permanent Observers to the United Nations in circular diplomatic notes of January 19, 1983 and May 15, 1987.

Notification Requirement

Pursuant to Section 4305 of the Foreign Missions Act (The Act), all foreign Missions, including any Mission to an International Organization, are obligated to notify the Department of State prior to a proposed lease, purchase, sale or other acquisition or disposition of real property in the United States by or on behalf of a foreign Mission. Under Section 4305 all such transactions are subject to disapproval by the Department of State.

The notification requirement applies to properties acquired for office or residential use by the foreign government for its Permanent Mission to the United Nations. In addition to the lease or purchase of new property, proposals for the alteration, addition, or change in purpose of existing properties are also considered acquisitions under the Act

and must be submitted to the Department of State for review.

Missions should notify the United States Mission to the United Nations of proposed acquisitions as early in the process as possible. Missions which obtain the benefit of the Department of State's experience and advice in the early stages of acquisitions may avoid unnecessary financial or legal complications.

Procedure

The review process is initiated by the delivery of a diplomatic note to the Host Country Affairs Office of the United States Mission to the United Nations. A copy may also be sent to the New York Office of Foreign Missions. At a minimum the note should include:

1. The exact address of the property, including apartment or suite number;

2. The proposed use of the property, i.e., Mission, Mission annex, residence;

3. The method of acquisition, i.e., purchase, lease, lease term.

After receipt of the diplomatic note, the Foreign Missions Act allows the Department of State up to sixty (60) days to review the request. In most instances, a response will be provided well before the expiration of the sixty day period, normally in two to three weeks. In some cases, however, the full review period may be required and Missions are therefore encouraged to submit notifications as far in advance as possible.

Prior to receiving a response from the United States Mission to the notification, or prior to the expiration of the sixty day period, a Mission may not enter into a contract or lease agreement unless the agreement expressly states that the execution of the agreement is subject to disapproval by the Department of State.

Property for Mission Use

Property acquired by Missions to the United Nations for mission purposes are to be used in their entirety for the purposes prescribed. Property approved for Mission use should not be used by other government offices, or leased or otherwise put to commercial use, even in part, without the express consent of the Department of State.

The approval process of the government of the City of New York for the use of new properties for Mission purposes, or for alterations to existing properties, is separate from, and in addition to, the approval of the Department of State. The purchase, alteration, and use of Mission premises are subject to compliance with applicable local land use and building laws and regulations. Missions are expected to obtain the appropriate municipal permits for the construction, alteration, and/or the occupancy of new office space, before construction begins or new space is occupied.

Property for Residential Use

All apartments for houses leased or purchased in the name of Missions to the United Nations for residential use by members of the Mission are subject to the Department of State notification requirements under section 4305 of the Act. The

purchase and use of residential properties is also subject to compliance with the applicable laws and regulations of the local jurisdiction and, as with properties for Mission use, the alteration or expansion of such properties is subject to the prior notification requirements of the Department of State and to compliance with local building codes and regulations.

Property Tax Exemption

The Permanent Representatives are reminded that any portion of property which is not used for diplomatic purposes of that sending state will not benefit from tax exemption or inviolability. Foreign Governments are entitled to exemption from real estate taxes on properties owned by the Government and used by its Permanent Mission to the United Nations. Such properties include the Permanent Mission, Mission annexes, and the residence of the Permanent Representative.

Exemption from taxation does not include exemption from fees separately stated on a property tax bill which relate to services to the property. Typical examples of such services include utilities, water, sewerage and refuse collection. Such charges are separately stated on the tax bill and must be paid. Private contractors and attorneys should be informed that applications for building and construction permits, certificates of occupancy and property tax exemptions for the City of New York should be submitted, along with a copy of the Mission's diplomatic note to the United States Mission, to the General Counsel, New York City Commission for the United Nations and Consular Corps, 2 United Nations Plaza, 27th Floor, New York, New York 10017.

Inquiries relating to United States Government policy and procedures described in this note may be directed to the United States Mission to the United Nations, telephone (212) 415-4156.

The United States Mission to the United Nations avails itself of this opportunity to renew to the Permanent Missions and Offices of the Permanent Observers to the United Nations the assurances of its highest consideration.

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cc: HC Chron
HC Country
HC Board
HC Subject
HC Country
Reference
OFM/New York
IO/UNP-Boesel (via Pouch)
HC Officers

wang # 1288/baf

UNITED STATES MISSION
TO THE UNITED NATIONS

April 5, 2001

HC-12-01

The United States Mission to the United Nations presents its compliments to the Permanent Missions to the United Nations and has the honor to refer to the issue of taxation of real property owned by diplomatic missions and located in the State of New York:

New York State Real Property Tax Law 418 provides that

> "Real property of a foreign government which is a member of the United Nations . . . , the legal title to which stands in the name of such foreign government or the principal resident representative or resident representative with the rank of ambassador or minister plenipotentiary of such foreign government . . . , used exclusively for the purposes of maintaining offices or quarters, for such representatives, or offices for the staff of such representatives, shall be exempt from taxation, except levies made on a city-wide or borough-wide basis which are collectible with the property tax. . . . If a portion only of any lot or building of any such government or representative is used exclusively for the purposes herein described, then such portion only shall be exempt and the remainder shall be subject to taxation unless otherwise exempt front taxation by law."

Pursuant to the referenced Law, and consistent with international law, the United States Mission offers the following examples for the convenience of the Permanent Missions:

With Regard to Office Premises

If the Permanent Mission occupies office space in a building owned by itself or by the Government of the sending state all that portion of the building used to perform official functions of the Mission is exempt from New York property tax. If a portion of that same building is also occupied by the Consulate General of the same state, the consular office space is also exempt from New York property tax under the Vienna Convention on Consular Relations. On the other hand, those portions of the building that may be rented or leased to other entities – even if that entity is another Permanent Mission to the United Nations – is subject to New York property tax. The same is true for space occupied by the offices of the national airline, other government corporations of a commercial nature, or any private commercial tenants.

If a bilateral agreement specifically regarding property taxation exists between the United States and the Government represented by the Permanent Mission, exemption from property tax in the State of New York is controlled by that bilateral agreement in precedence to Real Property Tax Law 418.

With Regard to Residential Premises

If the Permanent Representative resides in a building or house owned by the Mission or the sending state, or if the title to the property stands in the name of the Permanent Representative, that residence is exempt from New York property tax. The government- or mission-owned residence of any individual at the Permanent Mission with the title of Ambassador or Minister Plenipotentiary, or titled in the name of Ambassador or Minister-Plenipotentiary, and

occupied by such a person, is also exempt from property tax under New York Real Property Tax Law 418. The residence or the Chief of Mission of a consular post enjoys tax exemption under the Vienna Convention on Consular Relations. All other residential property owned by the Permanent Mission or the sending state and occupied by a diplomat or mission member of lesser rank is subject to property tax, unless an existing bilateral agreement between the sending state and the United States provides for exemption from property tax.

Exemption from New York property tax may be secured by an application to the local taxing authority. Permanent Missions may wish to contact the United States Mission for further information in this regard. It is also important to remember that water, sewer, or frontage taxes are not in fact taxes but rather charges for municipal services provided to the building or the property. Payment for these services must of course be made.

The United States, Mission to the United Nations avails itself of this opportunity to renew to the Permanent Missions to the United Nations the assurances of its highest consideration.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

THE CITY OF NEW YORK,

Plaintiff,

-against-

THE BAYARYN JARGAL-SAIKHAN, AS PRINCIPAL RESIDENT REPRESENTATIVE TO THE UNITED NATIONS OF THE MONGOLIAN PEOPLE'S REPUBLIC, et al.,

Defendants.

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DECLARATION OF JOHN R. LOW-BEER IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS

No. 03 CV 6086 (RCC)

JOHN R. LOW-BEER declares under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct:

1. I am an Assistant Corporation Counsel in the office of Michael A. Cardozo, Corporation Counsel of the City of New York, attorney for plaintiff.

2. I submit this Declaration in opposition to defendant's motion to dismiss for lack of subject matter jurisdiction.

3. Attached hereto as Exhibits A-D are copies of documents cited in Plaintiff's Memorandum Of Law In Opposition To Defendant's Motion To Dismiss:

Document	**Ex.**
U.S. Dept. of State, *Guidance for Administrative Officers* § 7.8 (Jan. 4, 2004) (downloaded Feb. 1, 2005 from http://www.state.gov/documents/organization/27910.pdf)	A
Diplomatic Note HC-12-01 (Apr. 5, 2001)	B
Diplomatic Note HC-1 8-93 (Apr. 14, 1993)	C
Diplomatic Note HC-06-93 (Feb. 17, 1993)	D

Dated: New York, New York
February 7, 2005

/s/ John R. Low-Beer
JOHN R. LOW-BEER
(JL 3755)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

THE CITY OF NEW YORK,

Plaintiff,

-against-

THE PERMANENT MISSION OF INDIA TO THE UNITED NATIONS, GREAT AMERICA LEASING CORPORATION, and "JANE DOE #1" "JANE DOE #20", the names of the last 20 defendants being unknown to plaintiff, the persons or parties intended to be, persons or corporations, if any, having or claiming an interest in or lien upon the property described in the complaint,

Defendants.

----------X

No. 03 CV 3256 RCC

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that Defendant The Permanent Mission of India to the United Nations appeals to the United States Court of Appeals for the Second Circuit from the Order entered in this action on July 8, 2005, denying Defendant's motion to dismiss, *inter alia*, for lack of jurisdiction under the Foreign Sovereign Immunities Act.

Dated: New York, New York
August 5, 2005

KAYE SCHOLER LLP

By: /s/ John J.P. Howley
Robert A. Kandel (RK-6120)
John J.P. Howley (JH-9764)
Attorneys for Defendant
425 Park Avenue
New York, New York 10022
(212) 836-8000

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

THE CITY OF NEW YORK,

Plaintiff,

-against-

THE BAYARYN JARGAL-SAIKHAN, AS PRINCIPAL RESIDENT REPRESENTATIVE TO THE UNITED NATIONS OF THE MONGOLIAN PEOPLE'S REPUBLIC, and "JANE DOE # 1" JANE DOE # 20" the names of the last 20 defendants being unknown to plaintiff, the persons or parties intended to be, persons or corporations, if any, having or claiming an interest in or lien upon the property described in the complaint,

Defendants.

----------X

No. 03 CV 6086 (RCC)

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that Defendant The Bayaryn Jargalsaikhan, as Principal Representative to the United Nations of the Mongolian People's Republic, appeals to the United States Court of Appeals for the Second Circuit from the Order entered in this action on July 8, 2005, denying Defendant's motion to dismiss, *inter alia*, for lack of jurisdiction under the Foreign Sovereign Immunities Act.

Dated: New York, New York
August 5, 2005

KAYE SCHOLER LLP

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